

General Counsel's Exhibit No. 4, Union's Proposals to Modify Agreement, Mailed to Lion Oil Company and Dated August 24, 1951	81
General Counsel's Exhibit No. 8, Copy of Letter Dated June 23, 1952. Addressed to Lion Oil Company, Confirming Verbal Offer of Union to Return to Work All Strikers on June 21	94
General Counsel's Exhibit No. 9, Copy of Letter Dated June 23, 1952, Addressed to the Oil Workers International Union Amending Contract	95
General Counsel's Exhibit No. 10, Letter Dated June 23, 1952, Signed by Mr. A. M. Sprague, Plant Superintendent, Addressed to Billy Joe Davis, Directing Him to Report to Work	101
Transcript of Testimony—	
E. P. Shelton, Witness on Behalf of General Counsel—	
Direct Examination	101
Cross Examination	116
Re-Direct Examination	118
A. M. Sprague, Witness on Behalf of General Counsel—	
Direct Examination	119
R. E. Minert, Witness on Behalf of General Counsel—	
Direct Examination	123
H. D. Dickens, Witness on Behalf of General Counsel—	
Direct Examination	125
John Henry Young, Witness on Behalf of General Counsel—	
Direct Examination	127

C. W. Whitworth, Witness on Behalf of General Counsel—

Direct Examination 130

Robert F. Goss, Witness on Behalf of General Counsel—

Direct Examination 132

J. B. Rogerson, Witness on Behalf of Respondent—

Direct Examination 138

Cross Examination 141

A. M. Sprague, Witness on Behalf of Respondent—

Direct Examination 142

Cross Examination 143

J. L. Dougherty, Witness on Behalf of Respondent—

Direct Examination 143

Cross Examination 143

Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order 145

Statement of the Case 145

Findings of Fact 147

Conclusion of Law 184

Order 185

Appendix A to Order 190

Exceptions by the Respondent Lion Oil Company to the Proposed Findings of Fact, and Proposed Conclusions of Law, and Proposed Order Issued by the Board under Date of July 30, 1953 192

Decision and Order 205

Petition for Review of, and to Set Aside, an Order of National Labor Relations Board 239

Answer of the National Labor Relations Board to Petition to Review and Set Aside Its Order, and Request for Enforcement of Its Order 243

strained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act, and thereby did engage in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

XVIII.

The activities of Respondent as set forth in paragraphs VIII, XI, XII and XIII, XIV, XV, XVI and XVII, occurring in connection with the operations of Respondent as described in paragraphs I through III above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes threatening and obstructing commerce and the free flow of commerce.

XIX.

The acts of Respondent described above constitute unfair labor practices within the meaning of Sections 8 (a) (1), 8 (a) (3), 8 (a) (4) and 8 (a) (5), and 2 (6) and (7) of the Act.

WHEREFORE, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director of the Fifteenth Region, on this 11th day of August 1952, issues this Complaint against Lion Oil Company, Respondent herein.

/s/ John F. LeBus

John F. LeBus, Regional Director
National Labor Relations Board
Fifteenth Region

820 Lowich Building, 2026 St. Charles Avenue
New Orleans 13, Louisiana

INDEX

Complaint	1
Appendix A to Complaint	6
Answer of Respondent, Lion Oil Company, to the Complaint Filed Against It in This Case	14
General Counsel's Exhibit No. 3, Articles of Agree- ment Between Lion Oil Company and Oil Workers International Union, C. I. O.	27
Exhibit "A"—Lion Oil Company Chemical Divi- sion Promotion Chart for Bargaining Unit Repre- sented by O.W.I.U.-C.I.O.	66
Exhibit "B" (As Amended)—Wage Rates and Classifications	67
Exhibit "C-1"—Lion Oil Company Chemical Divi- sion Shift Schedule for Year 1950	71
Exhibit "C-2"—Shift Schedule for Sr. Operator #21 Shift Man in Water Section	72
Exhibit "C-3"—Shift Schedule for Sr. Operator #21 Shift Man in Power Section	73
Exhibit "C-4"—Shift Schedule—Ammonia Loader	74
Exhibit "C-5"—Shift Schedule for Employees Working in Gas Refrom and Nitric Acid Labora- tories	74
Exhibit "C-6"—Work Schedule for Janitors in Operating Area	75
Exhibit "C-7"—Work Schedule for Employees of the Labor Department Other Than Janitors in the Operating Area	76
Exhibit "C-8"—Shift Schedule for Jr. Operator #21 Shift Man in Power Section	78
Exhibit "C-9"—Work Schedule for Miscellaneous Workers in the Laboratory Section	79
Exhibit "C-10"—Shift Schedule for Day Labor at Pelleting Plant	80

Proceedings in the United States Court of Appeals for the Eighth Circuit	249
Opinion, Vogel, J	249
Decree	255
Clerk's certificate (omitted in printing)	256
Order allowing certiorari	256 ✓

Complaint

It having been charged by the Oil Workers International Union CIO, (herein called the Union) that Lion Oil Company (herein called Respondent) has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, (herein called the act), the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board (herein called the Board), has caused the Regional Director for the Fifteenth Region, as agent for the Board, designated by the Board's Rules and Regulations, Series 6, Section 102.15, to issue this Complaint and allege as follows:

I.

Respondent, Lion Oil Company, is and has been for many years a corporation duly organized under and existing by virtue of the laws of the State of Louisiana.

II.

At all times mentioned herein Respondent has maintained its principal office and place of business in El Dorado, Arkansas where it is engaged in the refining and distribution of petroleum and petroleum products and in the manufacture and sale of chemicals. In connection with these operations the Respondent maintains its Chemical Plant near the city of El Dorado.

III.

During the calendar year of 1951 Respondent received raw materials from without the State of Arkansas valued in excess of \$1,000,000.00. During a similar period Respondent sold, shipped and delivered finished products to states other than the State of Arkansas valued in excess of \$1,000,000.00.

IV.

The Union is a labor organization within the meaning of Section 2 (5) of the Act.

V.

In order to insure the employees the full benefits of their rights to self-organization and to collective bargaining and to otherwise effectuate the policies of the Act, all employees of Respondent at its Chemical Plant including all production, chemical and operating employees and all janitors, porters, maids, and other common laborers excluding all maintenance employees not mentioned in the inclusions, guards, firemen, office and clerical employees, non-working foremen, and all supervisory employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

VI.

Prior to June 21, 1952, and at all times thereafter to the present, a majority of the employees of Respondent in the unit described in paragraph V above designated and selected the Union as their representative for the purposes of collective bargaining with Respondent.

VII.

At all times since June 21, 1952, and for many years prior thereto, the Union has been the representative for the purpose of collective bargaining of a majority of the employees in the unit described in paragraph V above and has by virtue of Section 9 (a) of the Act, been the exclusive representative of all employees in the aforesaid unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and conditions of employment.

VIII.

Respondent recognizes the Union as the exclusive representative of its employees in the unit described in para-

graph V above but has, though requested, to do so, since June 21, 1952, refused to bargain collectively with the Union as the duly authorized representative of its employees in the said unit.

IX.

On or about April 30, 1952, the employees of Respondent, including those listed in Appendix "A", within the unit described above in paragraph V, did concertedly cease work and go on strike.

X.

The striking employees, including those listed in Appendix "A", made unconditional offers to return to work on or about June 21, 1952, said offers remaining continuously in effect and repeated at various times thereafter.

XI.

Respondent on or about June 21, 1952, and on various dates thereafter, refused and continued to refuse until on or about August 4, 1952, to reinstate the striking employees, including those listed in Appendix "A" to their former or substantially equivalent positions of employment, but did lock out and deny admittance to the plant to said employees.

XII.

Respondent did refuse to reinstate and lock out its striking employees because of their membership and activities in the Union and because of other concerted activities for mutual aid and protection and in order to force and require the Union to enter into a contract on terms acceptable to Respondent.

XIII.

From July 16, 1952 until July 30, 1952 Respondent imposed as an additional condition to the reinstatement of the striking employees, including those listed on Appen-

Complaint

dix "A", and the termination of the lock out, the withdrawal of the charge filed by the Union in this matter.

XIV:

By the aforementioned acts, and each of them, as set forth in paragraphs VIII, XI, XII and XIII in connection with the allegations contained in paragraphs V, VI and VII, Respondent has refused to bargain collectively with the representative of its employees and thereby engaged in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

XV.

By the acts described in paragraphs XI and XII, and each of them, in connection with the allegations contained in paragraphs IX and X, Respondent did discriminate in regard to the hire and tenure of the striking employees, including those listed on Appendix "A" in order to discourage concerted activity on the part of employees for collective bargaining and other mutual aid and protection, and thereby did engage in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

XVI.

By the aforementioned acts, and each of them, as set forth in paragraphs XI and XIII in connection with the allegations of paragraphs IX and X, Respondent has discriminated in regard to the hire and tenure of employment of the striking employees, including those listed on Appendix "A", because they through the Union filed charges under the National Labor Relations Act, and thereby did engage in unfair labor practices within the meaning of Section 8. (a) (4) of the Act.

XVII.

By the aforementioned acts, and each of them, as set forth in paragraphs VIII, IX, XII and XIII, occurring in connection with the allegations contained in paragraphs V, VI, VII, IX and X, Respondent has interfered with, re-

APPENDIX A

Provell Aaron	Warren Barnes
Thomas Abdella	A. A. Barrett
E. L. Adams	C. P. Barrett
Dan D. Adock	G. G. Beasley
B. M. Addington	Oscar Berry
J. O. Agerton	J. W. Bettis
S. G. Akins	Howard Blalock
B. J. Alderson	Robert L. Blaylock
Leavy Allen	J. E. Bledsoe
A. H. Allison	C. S. Boardman
D. B. Anderson	James H. Bolding
Jack C. Anderson	Ocie Boone
Paul C. Andrews	Geo. R. Booth
M. P. Arledge	James E. Boswell
W. B. Arminstead, Jr.	Burnett Bowens
Simon Armstrong	Acie Bradford
De Witt Arrington	James E. Brasher
H. E. Atkins	Roy Braswell
E. L. Audirsch	W. P. Braswell
Lewis T. Avery	M. B. Brewer
Otis Avery	K. C. Bridges
M. G. Aurbrey	Earnest B. Briggs
Jessee J. Baggett	Frank Briggs
H. L. Bailes, Jr.	W. L. Brooks
Joe J. Bailey	A. D. Brown
A. L. Baker	D. L. Brown
E. J. Baker	E. E. Brown
F. B. Baker	Gus M. Brown
M. O. Barbaree	J. W. Brown
John Barker	Warner J. Brown
R. W. Barnes, Jr.	A. R. Buckalew, Jr.

Tommie L. Buckner	Maurice U. Cook
Elijah Buggs	C. E. Copeland
R. E. Bugh	H. J. Cottrell
C. F. Burleson	Otis Cowser
Willie J. Burns	E. L. Cox
J. E. Buswell	E. R. Cranford
F. H. Butler	Sam H. Crawford
J. E. Butler	F. G. Crenshaw
J. D. Butterfield	John C. Crisp
R. H. Cabaniss	M. C. Crittenden, Jr.
N. K. Calaway, Jr.	Paul Crumpler
A. T. Calvert	J. C. Cullins
Emon Cameron	L. F. Cullins
Jack D. Cameron	R. E. Cunningham
J. D. Cameron	Odis A. Cupp
C. W. Campbell	H. G. Currie
J. M. Canley	J. L. Daniel
J. C. Carr	L. W. Daniels
H. C. Carroll	C. C. Darden
J. M. Carroll	B. J. Davis
P. C. Carroll	Harvey Davis
E. L. Case	Hudie Davis
A. C. Chaney	J. H. Davis
Willie R. Charles	R. W. Davis
W. O. Cheatham	R. L. Davis
Monroe Cheatham	Roy F. Davis
Murphy Clawson	W. D. Davis
Eddie Cobb	H. S. Davison
Surnell Cobb	J. C. Davison
Willie A. Cobb	Royce M. Dean
Jake Cole	J. H. Delk
H. S. Combs	T. H. DeLone
J. W. Cook	G. A. Dennis
J. O. Cook	C. V. Dollar
Mack Cook	Judge E. Dorch

W. T. Doss
 A. L. Douglas
 R. L. Douglas
 J. C. Dove
 K. M. Dowdell
 C. C. Downs
 Doris L. Draper
 Hazel Drummond
 J. J. Drummond
 T. L. Dumas
 O. D. Duncan
 Bernard Dunn
 W. D. Dunn
 Hilbert Dunwood
 John Duren
 C. S. Durham
 W. E. Durrett
 Leonard Dutton
 John R. Dykes
 G. E. Edwards
 L. D. Edwards
 Geo. F. Elerson
 J. W. Ellen
 J. T. Elliott
 L. W. Elza, Jr.
 H. G. Epps
 D. C. Eudy
 L. D. Evans
 Q. K. Evans
 K. R. Everett
 O. B. Ewing
 B. T. Faison
 G. K. Farrar
 T. W. Farris
 W. W. Fennell

Jerry Fifer
 T. C. Fincher, Jr.
 D. H. Fitzgerald
 T. O. Flemiken
 Halsey Forch
 Gladys Ford
 Henry Ford
 Lonnie Ford
 Mack Ford
 Morris Ford
 R. L. Ford, Jr.
 J. L. Fortner
 D. D. Franks
 J. C. Frazier
 Leonard Frazier
 G. E. Freeman
 T. V. Fulton
 Jim Gafford
 S. J. Garner
 Price Garrison
 J. S. Gatling
 R. E. Gay
 H. M. Gibbons
 J. O. Giles
 Marvin Givens
 R. N. Givens
 A. M. Glenn
 G. R. Glover
 T. H. Golleher
 H. O. Goodwin
 J. E. Goodwin
 Oliver Goodwin
 W. N. Goodwin
 Leon Gordon
 P. A. Goza

W. D. Grace	J. H. Henderson
Troy Grafton	P. W. Henderson
A. B. Graham	Wilson Henry
Floyd Graham	W. D. Hibberts
R. E. Grandon	A. G. Hicks
C. E. Graves	E. T. Hilborn
Hazel J. Graves	Johnnie Hill
W. W. Graves	Roy S. Hill
J. F. Gray	Aubrey S. Hoggard
J. M. Gray	Ed Hollins
H. M. Green	Dodwell Holliman
G. E. Greenlee	B. T. Holmes
J. W. Griffin	H. D. Holt
M. J. Griffin	T. C. Holt
T. T. Griffin	B. J. Honea
A. O. Hale	Willa M. Hooker
J. C. Halsey	D. M. Howard
Weeda Norvelle Hamilton	Willie Howard
Henry Hampton	Othal W. Huddleston
James E. Hampton	P. W. Hudson
W. G. Hanry	J. W. Humphries
George Hanson	L. H. Hunter
Lee Roy Hanson	James R. Ingram
E. B. Harper	W. H. Irwin
J. P. Harris	A. C. Jackson
J. A. Harris	A. E. Jackson
J. W. Harris	A. K. Jackson
Nolen E. Harris	Jack Jackson
Percy D. Harris	R. M. Jackson
R. D. Harrisop	T. J. Jackson
Hazel S. Haskins	Willie J. Jackson
D. S. Haworth	Willie B. Jacobs
L. R. Hays	C. F. Jean
Charles Haynsworth	W. E. Jeffries
E. D. Helms	W. H. Jenkins

Francis U. Jett
C. W. Johnson
C. R. Johnson
H. L. Johnson
H. R. Johnson
James Johnson
James P. Johnson
Laura Johnson
Lewis T. Johnson
Obie S. Johnson
Phil J. Johnson
R. L. Johnson
Vassie Johnson
B. L. Jones
G. F. Jones
J. A. Jones, Jr.
Joe C. Jones
W. C. Jones
L. V. Keeling
Marvin Keith
H. C. Kellum
Cleveland Kennedy
Rex Lacewell
L. P. Lambert
J. A. Laney, Jr.
Leo H. Lawrence, Jr.
Charles Leavell
E. N. Lee
Finis Lee, Jr.
H. K. Leister
Oscer Lewis
P. C. Locke
William Lockhart
Roosevelt Loggin
Leon V. McAdoo

J. G. McAteer
Roosevelt McClelland
Phil McClendon
G. W. McCleskey
J. P. McConathy
F. A. McCoy
Lucious McDonald
Harding McElroy
Joe McElroy
V. R. McGough
F. E. McGowen
E. L. McGraw
Barney McHenry
O. O. McIlveene
W. A. McKenzie
Russell McLendon
O. O. McPherson
W. C. McWilliams
Otis A. Malone
Kenneth Manion
Earnest Marbray
Chester Marrable
R. L. Marsh
Fred Martin
Paul H. Martin
J. H. Mason
Eddie L. Massey
Jimmy D. Massey
L. T. Mayes
W. M. Meadows
H. H. Merritt
Willie Millage
J. T. Miller, Jr.
J. H. Mills
A. P. Mitchell, Jr.

Willie Modica
Robert Mollerberg
Boyd Moore
C. E. Moore
Horace Moore
Nilon Moore
P. A. Moore
W. D. Moore
Glen W. Moorhead, Jr.
Luster Moses
D. O. Murphy
F. E. Murphy
O. T. Murphy
T. W. Murphy
J. F. Nabors
H. G. Naremore
L. M. Nash
N. A. Nash
Fred L. Newsom
L. C. Newton
Fulton Nisley
C. A. Norfleet
E. C. Norris
Ted T. Novick
J. A. O'Brien
H. C. Odom, Jr.
Printice O'Guinn
C. C. Orr
J. T. Orren
R. W. Overman, Jr.
A. D. Owens
Howard Owens
John Palmore
C. D. Parnell
J. W. Pennington, Jr.

Earl Perdue
W. H. Perrin
Bobbie L. Phillips
D. W. Pipkin
S. M. Plair
Conroy Post
D. D. Powell
D. M. Powledge, Jr.
W. C. Primm
L. F. Proctor
E. L. Purifoy
F. J. Pynes
J. M. Quimby
J. E. Raley
J. J. Ramey
Harold Ramsey
J. W. Ratcliff
J. T. Rea
Curtis Reed
Grafton Reed
J. R. Reed
Thomas Lee Reed
George W. Reedy
L. R. Reid
A. M. Reynolds
A. O. Rhoades
V. H. Rhodes
A. B. Richardson
Ira O. Risher
J. H. Risinger
Max O. Risinger
C. E. Ritchie
B. F. Ritchie
Alvin Roberson
D. C. Roberson

C. P. Roberson
J. S. Robertson
E. Y. Roberts
E. Robinson
R. L. Rogers
W. A. Rogers
J. E. Ross
J. R. Ross
H. P. Rowens
W. C. Rowland
H. R. Rybiski
Roy Sample
Isiah Sanders
D. N. Sands
E. F. Sanford, Jr.
C. L. Schrest
S. C. Sewell
Armstead Sharp
Beverly Shelby
E. P. Shelton
W. B. Shelton
V. A. Short
Burnette Shutes
R. A. Simms
D. E. Slater
D. M. Smalling
A. D. Smith
J. E. Smith
R. T. Smith
Thomas Smith
T. H. Smith
W. B. Smith, Jr.
Eddie Snowden
Jack Snowden
Paul Snowden

F. E. Solley
N. T. Spears
T. T. Spooner
James Springer
L. S. Spry
J. F. Stegall
D. R. Stevens
F. I. Stevens
Clarence Stone
Melvin Stone
A. Stott
H. M. Stringfellow
G. D. Sturdivant
Itha B. Sullivant
M. B. Sullivant
Kenneth Swiger
J. L. Talley, Jr.
James Talley
J. R. Tanner
John Tatum
L. P. Taunton
C. B. Taylor
L. C. Taylor
L. R. Taylor
W. E. Taylor
H. A. Telford
R. C. Templeman
W. E. Templeton
W. M. Templeton
Ray W. Terrell
Tommie Thigpen
Carl Thomas
J. E. Thomas
E. T. Thompson
M. H. Thompson

Ulyes Thurman
T. J. Tow
C. C. Townsend
J. M. Trammell
W. D. Trivillian
T. R. Tucker
W. C. Tucker
H. B. Turner
J. C. Vickers
C. N. Vinson
F. C. Vinson
Charlie Wade
T. D. Wagon
Elsie B. Walker
J. D. Walls
G. J. Ward
J. G. Ward
R. J. Ward
T. F. Ware
George Washington
Mack Washington
Walter T. Washington
W. H. Waters
Sam Watson
Scipio Watson
Billy Waterfield
T. R. Webb
O. F. Welch
L. B. Wells
E. S. West
S. B. West, Jr.
R. E. Whatley

W. B. Wheelus
D. G. Whiddon
G. F. White
M. L. White
R. L. White
E. A. Whitten
W. J. Whitworth
Earnest Wiggins
Hays Wilkins
J. L. Wilkinson
Albert Williams, Jr.
Harper Williams
Henery Williams
Homer Williams
John Williams
J. W. Williams, Jr.
L. T. Williams
Prentis E. Williams
V. H. Williams
W. R. Williams
Eddie Willis
H. G. Wilson
J. M. Wilson
W. E. Wolfe
C. D. Wooley
F. M. Wright
Dan N. Wylie
Clois Yates
E. B. Young
J. H. Young
B. F. Zornes
C. G. Zwahlen

Answer of Respondent to Complaint**Answer of Respondent, Lion Oil Company, to the
Complaint Filed Against It in This Case**

Comes Lion Oil Company, Respondent in this case, and for its answer to the complaint against it herein filed, states:

I.

The Respondent denies the allegations contained in paragraph I of the complaint, and states that the Respondent, Lion Oil Company, has at all times mentioned in the complaint, and now is, a corporation duly organized and existing under the laws of the State of Delaware.

II.

The Respondent admits the allegations contained in paragraph II of the complaint.

III.

The Respondent admits the allegations contained in paragraph III of the complaint.

IV.

The Respondent admits the allegations contained in paragraph IV of the complaint.

V.

The Respondent denies each allegation contained in paragraph V of the complaint. Since June 27, 1947; Oil Workers International Union, C.I.O. (hereinafter referred to as "Union") has been the representative for collective bargaining with the Respondent of employees of the Respondent working at its Chemical Plant mentioned in the complaint in the operating department, in chemical laboratories, and of all persons working at that Plant as laborers, maids and janitors. At all times mentioned in the complaint herein filed, the Respondent has had in its employ at the Chemical Plant mentioned in the complaint approximately 250 persons in the maintenance department

thereof, who were represented by International Association of Machinists, Local 224, as their exclusive agent for bargaining collectively with the Respondent, and has employed at said Plant numerous persons who serve either as guards, firemen, foremen or supervisors, no one of whom is represented by anyone for collective bargaining with the Respondent.

VI.

The Respondent has no knowledge of any fact alleged in paragraph VI of the complaint and, therefore, denies each allegation contained in that paragraph.

VII.

The Respondent denies each allegation contained in paragraph VII of the complaint, and in connection therewith reiterates the allegations contained in paragraph V of this answer.

VIII.

The Respondent admits that it has recognized the Union as the exclusive bargaining agent of the employees of the Respondent as stated in paragraph V of this answer, but denies that since June 21, 1952, or at any other time, it has refused to bargain collectively with the Union as the agent of said employees or any of them.

On the 24th day of August, 1951, the Union notified the Respondent of its desire to amend the contract which was then in effect between the Respondent and the Union governing working conditions of employees working at the Respondent's Chemical Plant mentioned in the complaint and represented by the Union. On the same day the Union notified the Federal Mediation Service and the Arkansas Commissioner of Labor of the existence of a labor dispute between the Union and the Respondent. The first meeting between the Union and the Respondent, in an attempt to agree upon amendments to that contract, was held on August 29, 1951, and between that date and April 30, 1952, the date upon which the strike here in-

involved began, 37 meetings between representatives of the Union and the Respondent were held for that purpose.

Subsequent to April 30, 1952, representatives of the Respondent and of the Union held 27 meetings in an effort to settle the differences between them, and reached a settlement of their differences by the execution of a contract in writing on August 3, 1952.

IX.

The Respondent admits that on April 30, 1952, all of the employees of the Respondent, who were working at the Chemical Plant of the Respondent and were represented by the Union, went upon strike against the Respondent. Said strike was called by the Union in an effort thereby to induce the Respondent to agree to increase the wages of the employees of Respondent represented by the Union and to extend to them other benefits. Respondent states that 30 of the persons whose names are listed on Appendix A to the complaint have worked for Respondent at its Chemical Plant during a part of the period from April 30, 1952, to August 4, 1952.

X.

The Respondent denies that on June 21, 1952, or at any other time, the striking employees of the Respondent mentioned in paragraph IX of this answer made an unconditional offer to return to work.

The Respondent admits that on June 21, 1952, an international representative of the Union offered, in behalf of the striking employees, that the employees return to work for the Respondent under the provisions of the contract which was in effect between the Respondent and the Union on April 30, 1952, covering the conditions under which those employees were at that time working for the Respondent and that negotiations for amendments to that contract be continued thereafter. In making such offer, the Union refused to agree, in behalf of said employees, that they would continue to work for the Respondent for any period if the Respondent permitted them

to return to work under the terms of said agreement. At all times since April 30, 1952, and for some time prior thereto, the Union, as the representative of those employees, and those employees, has and have constantly contended that under the provisions of said contract which existed between the Union and the Respondent on April 30, 1952, the employees of the Respondent represented by the Union had a right to strike at any time, in spite of the fact that said contract remained in full force and effect.

That contention of the Union, as the representative of said employees, and of those employees, was continuously maintained until August 4, 1952, at which time the strike was settled by the Union and the Respondent executing a contract in writing under the terms of which the employees represented by the Union returned to work at said Chemical Plant.

The Respondent states that the offer made by the Union, as hereinbefore stated, was not made in good faith and alleges that the purpose of the Union in making such offer was to cause the employees represented by it to return to work at the said Chemical Plant of the Respondent and subsequently disrupt the operation of said Plant by intermittent, unannounced work stoppages. The further purpose of the Union in making said offer was to strengthen its position in bargaining with the Respondent for an increase in wages and other benefits for the employees whom it represented by causing the employees of Respondent represented by it to return to work at the Plant and thereafter hold over Respondent the threat that those employees would again strike against the Respondent if the demands of the Union in bargaining for them were not met.

When the offer that the employees on strike return to work on the conditions hereinbefore stated was made by the Union, the Chemical Plant of the Respondent was being operated by supervisory employees of Respondent, approximately 250 machinists, represented by International Association of Machinists, Local 224, and a few men represented by the Union, at full capacity for the production of all products which it normally produced excepting

prilled ammonium nitrate and ammonium sulphate. There were no picket lines at the Plant when the Union made said offer, the employees represented by it having been enjoined from picketing by a temporary restraining order which was in effect for the period beginning June 4, 1952, and ending July 2, 1952.

No offer to return to work was made by the Union, or the employees represented by it, other than the conditional offer made by the Union as hereinbefore stated.

On four occasions prior to June 21, 1952, a group composed of some of the employees of the Respondent represented by the Union reported to the Chemical Plant of the Respondent for work. In each instance the offer to return to work was in bad faith, for the purpose of disrupting the Respondent's operation of its Plant, and to place the group of employees involved in a position to effectuate intermittent work stoppages at said Plant to harass and damage the Respondent.

On June 21, 1952, as a counter proposal, to the Union's offer that the employees involved in the strike return to work under the contract in effect April 30, 1952, the Respondent offered to permit the employees to so return to work if the Union would agree that they remain at work until July 1, 1953, and not strike prior to that date.

XI.

The Respondent denies each allegation contained in paragraph XI of the complaint, and alleges that at all times between April 30, 1952, and August 4, 1952, it considered and treated each person represented by the Union, who was on strike at its Chemical Plant mentioned in the complaint, as an employee of the Respondent and extended to them benefits as such.

The Respondent admits that at all times subsequent to May 30, 1952, and prior to the settlement of the strike, by the execution, on August 3, 1952, of the contract between the Union and the Respondent, the Respondent refused to permit the striking employees represented by the Union to return to work at said Plant unless they would

agree to remain at work for an agreed period without striking during that period.

XII.

The Respondent denies each allegation contained in paragraph XII of the complaint and further states that it has not at any time refused to grant, to any employee of the Respondent represented by the Union while said employee was on strike or not on strike, any right, privilege or benefit, or refused to reinstate any one of said employees, because of the employee's membership in the Union, or any activity by the employee in connection with the Union, and denies that it has committed any act, or omitted any act, with respect to any one of such employees because of the membership of the employee in the Union, the activities of the employee in the Union, or any concerted activities of any employees represented by the Union.

XIII.

The Respondent denies each allegation contained in paragraph XIII of the complaint.

XIV.

The Respondent denies each allegation contained in paragraphs XIV, XV, XVI, XVII, XVIII and XIX of the complaint, and denies that at any time it has by any act or omission of act, in its relations with the Union or any one of the employees of Respondent represented by the Union, engaged in any unfair labor practice within the meaning of the Labor Management Relations Act of 1947.

XV.

The replacement value of the Chemical Plant of the Respondent at which the strike here involved occurred is in excess of \$50,000,000.00. The Plant produces anhydrous ammonia from hydrogen obtained from natural gas and steam and nitrogen obtained from the air. The greater part of the anhydrous ammonia produced is converted

into ammonium nitrate solutions, ammonium sulphate, and prilled ammonium nitrate. One of the intermediate steps is the conversion of anhydrous ammonia to nitric acid. Raw sulphur is converted into sulphuric acid, which acid is used in the manufacture of sulphate of ammonia. The Plant is divided into principal units as follows: a unit for manufacturing anhydrous ammonia, units for the manufacture of nitric acid, a unit for the manufacture of ammonium nitrate solutions, a unit for prilling ammonium nitrate, a unit for the manufacture of sulphuric acid, and a unit for the manufacture of ammonium sulphate. Some of the equipment in the Plant is operated at extremely high temperature and at extremely high pressure. In several units a catalyst of great value is employed in the manufacturing process, which catalyst is in short supply. In other units in the Plant, expensive alloy tubes are employed at high temperatures to bring about certain chemical reactions.

The Plant is operated continuously. Normally the employees in the operating department of the Plant work in three shifts of eight hours each, effecting an around the clock continuous operation of the Plant.

The facilities for the manufacture of anhydrous ammonia are of a nature such that when that unit of the Plant is shut down there is great likelihood that the catalysts employed therein will be destroyed at great loss to the Respondent, and there is in each such instance of shut down great danger of damage to the equipment, even though the shut down is accomplished with the greatest care and skill. When the facilities for the manufacture of anhydrous are shut down, the danger of damage to the equipment in again putting it in operation is equally grave as that which exists upon a shut down of the equipment, and a minimum of ten days is required to bring production to full capacity. When the unit for the manufacture of prilled ammonium nitrate or the unit for the manufacture of sulphuric acid or the unit for the manufacture of ammonium sulphate is shut down, the unit must be purged of all material contained in it because of the corrosive nature of the materials which would otherwise remain in the equipment. To restore each of the three units last

mentioned to full production after a shut down requires several days.

When the strike here involved began at 11 p. m. on April 30, 1952, the Respondent had no basis upon which to arrive at any estimate as to how long the strike would last. Because of that fact and taking into consideration the characteristics of the Plant hereinbefore stated, the economic loss that would be caused the Respondent, and the danger of damage to the Plant involved in shutting it down and again putting it into operation, the Respondent determined to minimize its possible loss and the possibility of damage to its Plant by continuing the operation of the Plant, to the limit of its ability, through the services of supervisors employed at the Plant at the time the strike began.

Consequently, when the strike began, the supervisors shut down all production units in the Plant with the exception of the facilities for the manufacture of anhydrous ammonia and reduced the production of anhydrous ammonia by approximately 25%. As the strike continued, more efficient methods of operating units of the Plant by available supervisory personnel were evolved, full production of anhydrous ammonia was restored, and full production of ammonium nitrate solutions was accomplished, with the result that on the 21st day of June, 1952, the Plant was being operated at full production with the exception of the manufacture of prilled ammonium nitrate, sulphuric acid and sulphate of ammonia. On that date and thereafter the products manufactured at the Plant were being shipped therefrom in railroad tank car lots at regular intervals. At that time work was in process to begin without delay the manufacture of sulphuric acid and sulphate of ammonia.

The expansion of operations of equipment in the Plant was made possible to some extent by a number of employees of the Respondent employed in the maintenance department at the Plant and in the operating and labor departments at the Plant crossing picket lines and returning to work in the Plant, the number of those employees increasing from time to time as the strike continued.

The Respondent states that its refusal to permit striking employees represented by the Union to return to work at the Plant on and after June 21, 1952, was based solely upon the Respondent's belief that the purpose of the Union, and the men represented by it, in desiring to return to work, without an agreement that they would remain at work for any stated period and not strike during that period, was to disrupt the Respondent's operation of its Chemical Plant, to effectuate intermittent work stoppages at the Plant, to harass the Respondent, or to continue working at the Plant while holding over the head of the Respondent the constant threat of another strike in order to bolster the Union's position in bargaining with the Respondent.

XVI.

On the 1st day of May, 1952, the Respondent filed in the Chancery Court of Union County, Arkansas, a complaint against four of its striking employees employed in the operating department of its Chemical Plant, individually and as representative of all striking employees represented by the Union, in which the plaintiff sought a permanent injunction enjoining the defendants from picketing at the said Plant on the ground that their strike was in violation of the contract between the Union and Respondent under which they were working at the Plant at the time the strike began, and consequently picketing in connection therewith was for an unlawful purpose. The defendants filed answer to that complaint, being represented therein, among others, by the general counsel of the Union. On the 24th day of June, 1952, the defendants in that suit, acting through the same attorneys, filed an amendment to the answer to the complaint. In addition the defendants in that suit filed therein a cross complaint, in which cross complaint the defendants contended that the plaintiff had on May 31, 1952, and continuously thereafter, locked out the defendants from their employment with the plaintiff and that the plaintiff had refused to permit defendants to enter its Chemical Plant or to perform any work for the plaintiff. In their cross complaint the defendants asked an injunction against the plaintiff enjoining the plaintiff from

locking out or refusing to employ the defendants at the plaintiff's Chemical Plant.

On the 2nd day of July, 1952, the complaint of plaintiff and the cross complaint of the defendants in said suit was heard by the Chancellor presiding in said court and a decree was rendered dismissing the plaintiff's complaint for want of equity and dismissing the defendants' cross complaint for want of equity.

The Respondent pleads said decree as a complete defense to the complaint made against it in this case, that it locked out any one of its employees represented by the Union as charged in this complaint, and states that that decree precludes any relief being given to any one of said employees as a result of the Respondent's refusal to permit any one of them to return to work at its Chemical Plant during the period beginning June 21, 1952, and ending August 3, 1952.

XVII.

At the time the strike here involved began on April 30, 1952, there was in effect between the Union and the Respondent a contract governing the conditions under which employees of the Respondent, working for it at its Chemical Plant and represented by the Union, should work for the Respondent. The strike here involved, called by the Union on that date, was in violation of that agreement and constituted an unfair labor practice under the provisions of the Labor Management Relations Act of 1947. By that fact no one of the employees who participated in that strike is entitled to any relief under the provisions of said act even though it be established, in this case, that the Respondent was guilty of an unfair labor practice within the meaning of the Labor Management Relations Act of 1947 in refusing to permit that employee of the Respondent to return to work at the Chemical Plant of the Respondent during the period beginning June 21, 1952, and ending August 3, 1952.

XVII.

The Union and the leaders of the employees of Respondent represented by the Union has and have consistently contended for the entire period from 11 p. m. April 30, 1952, to August 3, 1952, that the contract between the Union and the Respondent which was in effect at 11 p. m. April 30, 1952, remained in full force and effect until August 3, 1952.

That contract contained the following provision:

"Any employee who has been off on an unauthorized absence not due to illness or injury shall not be allowed to return to work without giving eight hours' notice of his intention to return to work."

Each of the employees of the Respondent here involved was off duty on "an unauthorized absence not due to illness or injury" between April 30, 1952, and June 21, 1952. At no time on or after June 21, 1952, did any one of said employees give to his supervisor, or to any other representative of the Respondent, any notice of his intention to return to work eight hours prior to the time at which the employee intended to return to work. No one of the employees here involved reported to the Chemical Plant for work during the period beginning June 21, 1952, and ending August 3, 1952.

The Respondent states that said contract, including the provision thereof hereinbefore quoted, was in full force and effect for the entire period beginning June 21, 1952, and ending August 3, 1952, and that by reason of the facts stated in this paragraph XVIII, this Respondent was within its legal right in refusing to permit any one of the employees here involved to return to work at its Chemical Plant during said period.

XIX.

If as a matter of law the Respondent did lock out its employees here involved during the period beginning June 21, 1952, and ending August 4, 1952, which Respond-

ent denies, it had, under the Labor Management Relations Act of 1947, the legal right to do so.

XX.

During the period beginning June 21, 1952, and ending 7 a. m. August 4, 1952, the hour at which employees of the Respondent here involved returned to work at its Chemical Plant under the contract executed August 3, 1952, some of the employees of the Respondent represented by the Union worked at said Chemical Plant continuously, and some of the employees of the Respondent represented by the Union worked for the Respondent at the said Plant for a part of the period. Many of the employees of Respondent represented by the Union worked during the period last stated for some person or persons other than the Respondent, many of them working for contractors engaged in constructing an ordnance plant at Pine Bluff, Arkansas.

If it should be determined in this case that the Respondent acted wrongfully in refusing, on or after June 21, 1952, to reinstate any one of its employees here involved and that the employee involved is entitled to recover from the Respondent a sum of money equivalent to the amount which he would have earned working for Respondent during the period from June 21, 1952, to August 4, 1952, the Respondent should be credited against said claim with the amount, if any, earned by that employee in working for Respondent or for another employer during the period involved, or with a part of that amount to be determined.

WHEREFORE, the Respondent prays that the complaint filed against it in this case be dismissed.

Lion Oil Company

By Jeff. Davis

Lion Oil Building

El Dorado, Arkansas

VERIFICATION

STATE OF ARKANSAS
COUNTY OF UNION

I, Jeff Davis, under oath, state that I am General Counsel for Lion Oil Company, Respondent in the case mentioned in the caption of the foregoing answer, and that the allegations contained in the foregoing answer of Lion Oil Company are true and correct according to my best knowledge and belief.

Jeff. Davis

Sworn and subscribed to before me, a Notary Public in and for Union County, Arkansas, on this the 18th day of August, 1952.

Ann S. Plair

(Seal)

Notary Public in and for
Union County, Arkansas

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIFTEENTH REGION

Case No. 15-CA-488

In the Matter of
LION OIL COMPANY
andOIL WORKERS INTERNATIONAL UNION, C.I.O.
POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Lion Oil Company, a corporation duly organized and operated under and by virtue of the laws of the State of Delaware, does by these presents hereby make, constitute and appoint Jeff Davis, of El Dorado, Arkansas, its true and lawful attorney, to appear for it and represent it before the National Relations Board in connection with all matters pertaining to the case pending before that

Board and mentioned in the caption hereof, giving its said attorney full power to do everything whatsoever requisite and necessary to be done in the premises as fully as the undersigned might do if done in its own capacity.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized officers under the corporate seal this the 18th day of August, 1952.

Lion Oil Company
By R. E. Meinert
Vice President

(Seal)

Attest:

L. M. Arrable
Assistant Secretary

STATE OF ARKANSAS
COUNTY OF UNION

Subscribed and sworn to before me, a Notary Public, on this the 18th day of August, 1952.

Ann S. Plair
Notary Public

(Seal)

My commission expires: 9-19-53.

General Counsel's Exhibit No. 3.

UNION, C. I. O.

Preamble

Articles of Agreement between LION OIL COMPANY, hereinafter referred to as "Company" and OIL WORKERS INTERNATIONAL UNION, C. I. O., hereinafter referred to as "Union", whom the Company recognizes as the exclusive bargaining agency for all production, chemical, and operating employees and all janitors, porters, maids, and other common laborers at its chemical

plant located North of El Dorado, Arkansas, for the purpose of collective bargaining with respect to hours of work, rates of pay, wages, and other conditions of employment, all in accordance with the National Labor Relations Board's Directive Orders in Case No. 15-R-1039, Case No. 15-R-1587, Case No. 15-R-2004, and the applicable Federal Law. There is excepted from the bargaining unit described all maintenance employees not otherwise described within this Preamble, guards, firemen, office and clerical employees, non-working foremen, and all supervisory employees.

ARTICLE I

Term of Agreement

This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951; by compliance with the following procedure:

(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the sub-section immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective.

ARTICLE II

Right to Arbitrate

All grievances and disputes as to classifications, hours of work, and other working conditions, arising between the Company and employees shall be governed in manner of settlement by the terms of this agreement. Whenever any grievance or dispute arises which cannot be otherwise adjusted, the parties hereto agree that the same shall be decided in the manner provided for in Article III.

ARTICLE III

Grievance Procedure and Arbitration

Section 1. Each Grievance shall be adjusted as follows:

First Step.

The aggrieved employee and/or his steward shall verbally discuss the grievance with his foreman. If the foreman's verbal reply is not satisfactory, the employee and/or his steward shall submit the grievance in writing to the foreman. The foreman to whom a grievance is submitted in writing, shall give his written reply within 24 hours after receipt of the grievance, excluding Saturdays, Sundays, and holidays.

Second Step.

If the written decision of the foreman is not satisfactory, the Chief Steward shall submit the grievance in writing to the head of the department in which the grievance arose, who shall give his reply in writing within 72 hours after receipt of the grievance, excluding Saturdays, Sundays and holidays.

Third Step.

If the decision of the applicable department head is not satisfactory, the Chief Steward shall submit the grievance to the Workmen's Committee and if, after a thorough investigation, it is decided by the Workmen's

Committee that the grievance does have merit, it shall be submitted in writing to the Plant Superintendent, who shall have five days, after receipt of the grievance, excluding Saturdays, Sundays, and holidays, in which to render a written decision.

Fourth Step.

If the decision of the Plant Superintendent is not satisfactory, the Workmen's Committee may submit the matter in writing to the Director of Industrial Relations, for the Company, with a copy submitted to the Plant Superintendent, and the Director of Industrial Relations shall render his decision within ten days following receipt of such notice, Saturdays, Sundays, and holidays excluded. Within ten days following the receipt of the written decision of the Director of Industrial Relations, the Workmen's Committee shall notify the Director of Industrial Relations in writing as to whether his decision is satisfactory.

Fifth Step.

If the grievance is not satisfactorily adjusted through the procedure hereinbefore set forth, the grievance shall be referred for decision to an arbitration board consisting of three persons who shall be selected as hereinafter stated.

Within three days of the receipt of the notice hereinbefore last mentioned, the Director of Industrial Relations shall, in writing, inform the Workmen's Committee the name of the person selected by the Company to serve as a member of the arbitration board for the settlement of the grievance involved. Within three days of the receipt of such notice, the Workmen's Committee shall inform the Director of Industrial Relations in writing as to the name of the person chosen by the Workmen's Committee to serve upon said arbitration board. Within the following three days, the two members so named and selected shall attempt to agree upon the person to serve as the third member of the board. If the two members first selected to serve upon the board are unable, within the time mentioned, to agree as to the person to serve as the third member, they or either of them, shall immediately notify the

Company and the Workmen's Committee of that fact. Within three days of the date of the receipt of such notice, the Company, acting through the Director of Industrial Relations and the Workmen's Committee, shall jointly request the American Arbitration Association to designate a person to serve as the third member of the board.

When the board of three has been so selected, it shall meet for the consideration of the grievance as soon thereafter as is practical. Any such meeting of an arbitration board shall be held in El Dorado, Arkansas, unless the board unanimously decides otherwise.

Any such arbitration board shall decide the grievance submitted to it upon testimony presented to it by the Union and the Company in a public hearing, and shall render its decisions in writing, the decision of any two, or more, members to be the final decision of the board.

The expense in connection with the service of the third member of the board shall be paid equally by the Company and the Union. The Union and the Company shall respectively bear the expense of its representatives named to serve upon any arbitration board.

Each party hereto shall comply fully with each award or decision made by any such arbitration board.

Section 2. No provision of this Article III or of any other Article of this agreement shall deprive any employee covered by the terms of this agreement of any rights to which he may be entitled under Section 9 (a) of the Labor-Management Relations Act of 1947, or any other Statute of the United States.

Section 3. The Workmen's Committee above mentioned, composed of five members, shall be elected from among and by employees of the Company, who are covered by this agreement. The Secretary of Local 434 of the Union and the Chairman of the Workmen's Committee will certify to the Company the duly elected members of the Workmen's Committee.

ARTICLE IV**Classification Changes**

Section 1. An employee who is temporarily required to perform, for as many as three consecutive hours, work of a classification with respect to which the rate of pay is greater than the rate of pay for the classification to which the employee is at the time regularly assigned, shall be paid at the rate of the higher classification in which he is working so long as, and only so long as, he is required continuously to perform work of the higher classification.

Section 2. If an employee is temporarily shifted to any classification paying a smaller wage rate than his regularly assigned classification, no reduction in rate shall be made during the first two weeks.

Section 3. An employee who, because of reduction in the working force, and through no fault of his own, is to be permanently demoted, discharged, or laid off, shall be given two weeks' notice of the date upon which he shall be permanently demoted, discharged, or laid off. In the absence of such notice, an employee who is demoted shall suffer no reduction in his wage rate for two weeks after his demotion, and an employee laid off or discharged shall receive, in lieu of notice, a sum equal to two weeks' pay at straight time for his regular weekly hours.

Notice or pay in lieu of notice referred to in this Section 3 shall not be required if layoff is due to reduction in force caused by fire, storm, explosion, or strike by employees of another employer.

Section 4. All work peculiar to any classification (job) shall be done by employees regularly assigned to that classification (job) except in cases of emergency. No arbitrary changes in present classifications, or duties thereof, will be made with the purpose or result of reducing the pay of any classification (job). Any man who has available time over and above his normal duties shall assist the men of his own classification or of lower classification in his own section.

Section 5. Except in cases of emergency, no foreman, supervisor, or employee not covered by this agreement shall do any work peculiar to any classification, the performance of which would cause any employee to suffer lay-off or loss of pay. The Company shall use technical employees from time to time to check tests and observe operating conditions, the performance of which would not cause any employee to suffer layoff or loss of pay.

ARTICLE V

Hours of Work

Section 1. The regular hours for work shall be eight hours per day and forty hours per work week. One and one-half times the applicable hourly rate as set forth on Exhibit "B" hereto will be paid as full compensation for all work in excess of eight hours in any one day, or forty hours in any one work week.

All hours worked in excess of eight, when more than eight hours have been worked in succession, shall be deemed to have been worked within the day in which that succession of hours worked began; provided, however, (1) that if such succession of hours worked began on one of the holidays mentioned in Article VIII hereof and ended on the following day, the Company shall pay with respect to those hours worked after the conclusion of the holiday only one and one-half times the applicable hourly rate as set forth on Exhibit "B" hereto, rather than double time as provided in Article VIII, and (2) that if this succession of hours worked extends into a holiday, double time shall be paid for those hours worked during such holiday.

Section 2. The work week shall begin at 11:00 p. m. on Sunday and end at 11:00 p. m. on the following Sunday. The work day shall begin at 11:00 p. m. and end at 11:00 p. m. on the following day.

Section 3. The work schedules and shift schedules, which are presently in effect and which are made a part of this contract as Exhibit "C", shall, subject to the provisions of Sections 9 and 14 of Article X, remain in full force and effect for the term of this agreement.

Section 4. If, in the event of curtailment of production, it becomes necessary to reduce personnel within the bargaining unit by more than thirty per cent, the Company and the Union will immediately begin negotiations with respect to the matter of hours and length of work week.

Section 5. The payment of additional compensation for any hours worked in excess of eight hours in any one day or forty hours in any one work week shall be in satisfaction of the obligation of the Company under this agreement, the Walsh-Healey Act, if it is applicable thereto, or under the Fair Labor Standards Act, if it is applicable thereto, as such acts now exist, provided, however, if either or both of said acts is, or are, amended, such amendment or amendments shall not affect this agreement. There shall be no duplicate payment for daily overtime and weekly overtime. If daily overtime is greater in any one work week, only daily overtime shall be paid, or, if weekly overtime is greater in any one work week, only weekly overtime shall be paid.

Section 6. Notwithstanding any other provision of this agreement to the contrary, no employee, except in case of emergency, shall be allowed or required to work more than sixteen (16) consecutive hours.

If an employee covered in Exhibit C-7, part 7, works continuously in excess of twelve (12) hours, said employee shall be paid double time for the continuous hours in excess of twelve (12).

All other employees who work more than sixteen (16) continuous hours shall be paid double time for the continuous hours in excess of sixteen (16).

ARTICLE VI

Callouts, Overtime, and Local Notification

Section 1. An employee called out for work outside his regular working hours, or held over for as much as one hour, in a case in which his relief is not late, shall be paid a minimum of three hours at straight time at his regular rate, even though the full three hours may not be worked

or he does not at work at all. An employee called out for work outside his regular hours will not be deprived of completing his daily schedule of hours on account of the extra hours worked on such callout. An employee called out for work who works continuously until the beginning of his regular work and continues to work the regular hours of his scheduled work shall not be considered to have had a change in shift within the meaning of Section 3 of this Article VI. Notwithstanding the fact that an employee has been called out for work, such an employee shall be required to perform his regular work scheduled during the remainder of the work week in which such callout occurs unless excused by the Company.

Section 2. If an employee reports to work on-time as scheduled, he shall be given the opportunity of working a full eight-hour shift. If an employee reports to work late for a scheduled work day and arrangements have been made to have an employee work overtime in his place, the Company shall allow the employee, who reported to work late, to work the remainder of his regular schedule, and the employee who is working overtime due to such employee being late will be relieved of duty.

Section 3. No employee shall lose any time from his normally scheduled forty-hour week occasioned by any shift change. However, any employee who is working extra to complete his forty hours per week, may be used as a relief man for filling vacancies in his section. The Company further agrees that such employee, excepting those regularly assigned to the relief pool and those regularly employed as relief testers in the chemical laboratory, shall receive 24 hours' notice prior to any change in his shift, or in lieu thereof, the employee shall receive time and one-half for the first shift worked; however, no such extra pay shall be paid when an employee's shift is changed incident to his promotion to a higher job, or when he is returned to his regular classification from an advancement.

Section 4. If an employee is instructed to work and does work continuously for as much as two hours before or beyond his regular shift or schedule, he shall be paid a

sum equivalent to thirty minutes at straight time pay in lieu of meal time.

ARTICLE VII

Shift Men—Day Men

The term "shift employee" as used herein shall be deemed to mean one who is employed for specific periods in the course of continuous operations regularly carried on during two or more shifts per day, seven days a week; each other employee is a "day employee".

ARTICLE VIII

Holiday Pay

Each of the following days is a holiday:

New Year's Day

Labor Day

Memorial Day

Thanksgiving Day

July Fourth

Christmas Day

Each of the above-mentioned holidays shall be deemed to begin at 11:00 p. m. on the day immediately preceding the holiday and end at 11:00 p. m. on the holiday.

Each employee shall be paid double time for each hour worked on a holiday, regardless of the number of hours worked in the work week in which the holiday falls; provided that if an employee works less than eight hours on any one holiday he shall be paid, with respect to that day, in addition to the sum which he has earned at double time for hours worked on that day, straight time for any hours less than eight which he worked on that day.

Each employee, covered by this agreement, who does not work on a particular holiday shall be paid with respect to that holiday a sum equal to his regular straight time for eight hours worked, provided that no such payment shall be made to a person with respect to a holiday, if he is on that day on leave of absence or does not work on that day because he has been previously laid off.

All employees covered by Exhibit C-7, whose services are not required on a holiday, shall be so notified and

shall not be required to work on the holiday. Any change as a result of such notice shall not be construed as a change in shift within the meaning of Section 3 of Article VI. All other employees shall be expected to work their normal schedule on any holiday.

Any employee covered by Exhibit C-7, who does not work on a holiday, or works less than eight hours on a holiday, shall be credited with eight hours and only eight hours work on that holiday in computing weekly overtime to which he is entitled for the work week in which that particular holiday occurs.

ARTICLE IX

Vacations

Section 1. Any employee who on the effective date of this agreement or on a day subsequent thereto, has accrued one year but less than two years of Company seniority, shall be entitled to a vacation of one week (40 hours) in each calendar year with full pay based upon straight time at the rate of his regular classification for the number of hours per week which he normally works in accordance with the established work schedule in effect upon the date on which his vacation begins, plus the hours for holiday pay under Article VIII, if a holiday occurs within the vacation period.

Any employee who has accrued two years or more of Company seniority at the time he takes a vacation shall be entitled to a vacation of two weeks (80 hours) in each calendar year, with pay for each week as hereinbefore provided.

Any "shift employee" who has accrued two years or more of Company seniority at the time he takes a vacation shall be entitled to a vacation of eleven working days (88 working hours) in each calendar year, and shall be paid a sum equal to 88 hours at the hourly rate for his regular classification on the date on which his vacation began, plus the hours for holiday pay under Article VIII, if a holiday occurs within the vacation period.

Section 2. Each employee must take his vacation during the calendar year in which it falls due. Any employee who is entitled to 80 hours' vacation may request that his vacation be scheduled in two periods of 40 hours each. Any employee who is entitled to 88 hours' vacation may request that his vacation be scheduled in two periods, one being for 40 hours and one being for 48 hours.

Section 3. If any employee is not permitted to take his vacation in the calendar year in which it is due because the Company finds it not convenient to excuse him from work, such employee shall be paid a sum equal to the sum to which he would have been entitled if he had taken his vacation within the period of time immediately preceding the end of the year which period is equal to his vacation period.

Section 4. No employee shall be permitted to begin a vacation in any calendar year within six months if the date of the end of the vacation taken by him during the preceding calendar year with the provision, however, that an employee who has received pay in lieu of vacation for one calendar year shall be entitled to his next annual vacation at any time during the next succeeding calendar year.

Section 5. Any employee who leaves the service of the Company for any reason, and who is then otherwise eligible for a vacation but has not taken it, shall be given pay in lieu thereof, on the basis hereinbefore stated.

Section 6. Normally all vacations shall begin at 11:00 p. m. Sundays, except the vacation that includes eleven working days may be begun at 11:00 p. m. Saturday, and shall be taken in one continuous period. Any exceptions to this rule shall not disrupt the vacation schedule of other employees and shall be permitted only with the consent of the Company.

ARTICLE X

Seniority

Section 1. Seniority shall be adhered to in all promotions, demotions, and layoffs, other than discharges for just cause.

Section 2. A Newly Established Operating Section.

In the selection of operating personnel for a new section, such selection shall be based on Operating Department seniority. If a Sr. Operator, Operator, or Jr. Operator is required, the standard qualifications for jobs in a new section shall be:

1. For Senior Operator.

Experience for six months as a regularly assigned Senior Operator within the Operating Department, or experience for twelve months as a regularly assigned Operator, or higher, within the Operating Department, or experience for eighteen months as a Senior Helper, or higher, in the Operating Department, or work for six months as a trainee in the new section.

2. For Operator.

Experience for six months as a regularly assigned Operator within the Operating Department, or regularly assigned work for twelve months within the Operating Department, or for six months as a trainee in the new section.

3. For Junior Operator.

Work for six months in the Operating Department, or work for three months as a trainee in new section.

The classifications to be established in any new section shall be discussed with the Workmen's Committee not less than ten days prior to the posting of new jobs in that section. Each new job shall be posted on the Company Bulletin Board and the Union Bulletin Board for a period of fifteen days, during which period signed bids for the job shall be received. At the end of said period, the successful bidder for each such new job shall be determined, as provided in this Section 2 of Article X.

Section 3. In applying the seniority provisions of this agreement each employee shall be credited with the seniority, if any, to which he is entitled as shown on the records of the Company at the time of execution of this agreement.

Section 4. Promotion Chart.

Attached hereto as Exhibit "A" and made a part hereof is a Promotion Chart showing all classifications (jobs) in the bargaining unit, and the various sections in each department, including the relief pool in the Operating Department. Only those employees covered by the terms of this agreement and included in the bargaining unit shall be entitled to exercise their seniority in their respective departments.

Notwithstanding any other provisions of this Article X, in order for an employee to be eligible to bid on a job posted as a vacancy in the Chemical Laboratory, he must have the following additional qualifications: (1) a minimum of a diploma from an accredited high school with credit achieved in a course in elementary chemistry or physics, or (2) experience which is the equivalent thereof.

Section 5.

(a) Subject to the provisions of Section 10 of this Article X, departmental seniority shall be cumulative and shall be continuous from the date on which the employee first enters the department involved as shown on the Promotion Chart attached hereto.

(b) Subject to the provisions of Section 10 of this Article X, sectional seniority shall be cumulative and shall be continuous from the date on which the employee first enters any particular section.

(c) In the event an employee has transferred from one section to another section, by reason of (i) a sectional shutdown, (ii) reduction in force in this section, or (iii) the return of an employee to that section after an absence in excess of 30 days, he shall retain his seniority in the section from which he was so transferred until he has failed to bid for a permanent vacancy in the section from which he was so transferred. However, if an employee in any section elects to bid on a job in another section and is the successful bidder, upon his transfer he shall then lose his accrued seniority in the section from which he bid. The provisions of this sub-section (c) shall not apply

to failure of one to bid for a job, the bidding on which occurs while he is laid off from work.

Section 6. New Employees.

(a) All new employees coming into the Operating Department shall be first assigned into the relief pool and by their seniority shall advance to any of the sections in the Operating Department by bidding on a posted job.

(b) All new employees coming into the Labor Department shall be first assigned into the labor pool and by their seniority shall advance to any of the sections in the Labor Department by bidding on a posted job.

Section 7. Filling Permanent Vacancies.

When a permanent vacancy occurs in any section in a department of the bargaining unit, the senior employee in the next lowest classification in that section shall without bidding be promoted until only the lowest classification in that section is left vacant, which vacancy shall be filled in the following manner:

(a) The lowest job vacancy in that section shall be posted within five days, excluding Saturdays, Sundays, and holidays, for bid on the Company and Union Bulletin Boards for a period of fifteen days.

(b) Immediately upon expiration of the posting period of fifteen days, the names of all bidders will be posted on the bulletin board. The bidders on the posted job will be contacted to ascertain their desire to accept the job. The successful bidder will be transferred to the new job as soon as possible following his acceptance of the job. The successful bidder's seniority in the section to which he is transferred will be retroactive to the sixteenth day after the job was posted. Each bidder will be expected to accept or reject the job within eight hours after he is contacted, provided he can be advised at that time of the status of bidders above him in seniority on that job. If he fails to advise the Company of his decision within the prescribed eight hours, he will forfeit his rights to that job.

In the event that no one wishes to accept the posted job, the last man employed in the relief pool and still working in the relief pool shall be assigned to that job; however, this assignment will not in any way affect the forty-five day probationary period of the employee, provided he has not completed his forty-five days' continuous employment with the Company.

If a permanent vacancy occurs in the Janitor Section the vacant assignment will be offered to all Janitors in order of their seniority. If no Janitor desires said assignment, then the vacancy will be posted for bid in accordance with this Section 7.

Notwithstanding any other provision of this Section 7, it is agreed that the Company shall have the right at any time during said fifteen-day posting mentioned above to withdraw that posting in the event the Company decides that such vacancy need not be filled. The provisions of this paragraph will not apply to filling normal vacancies.

Section 8. Filling Temporary Vacancies.

(a) Vacancies of More than 30 Days.

In the event a temporary vacancy exists for a period of more than thirty days in any section of the Operating Department, the senior employee in the next lower classification in that section shall be promoted on the thirty-first day until only the lowest classification in that section is left vacant, which temporary vacancy shall be posted for bid and filled in accordance with the applicable provisions of Section 7 above.

(b) Vacancies of 30 Days or Less.

1. When an employee is on vacation, he will be relieved while on vacation by the man working on the same shift (graveyard, day or evening shift) in the same section who is the senior employee in the next lower classification. The senior employee in the next lower classification in that section on the same shift shall be promoted until only the lowest classification in that section on that shift is left vacant, which vacancy will be filled by assignment by the Company from the relief pool; how-

ever, when a replacement cannot be secured from the relief pool, the man who is not relieved, because of vacation, shall have the first opportunity to work the double shift as outlined in the doubling procedure. If a relief pool man, who has been assigned to fill such a vacancy, is absent or fails to relieve an employee, the temporary vacancy caused thereby shall be considered as occurring in his classification and if no additional relief pool man is available, the man in the classification in which the vacation relief pool man was scheduled but failed to work shall be entitled to work the double shift as outlined in the doubling procedure.

When the 21 Shift man (shift breaker) is on vacation, he will be relieved for the entire number of days he is on vacation by the senior man in the next lower classification on the same shift in the same section at the regular rate of pay of the 21 Shift man. The 21 Shift man shall not be used for vacation relief except when he is eligible to get upgraded; in which event, he shall be relieved in the same manner as if he were on vacation himself. However, when there is no one eligible on the same shift in the same section to relieve the 21 Shift man when the 21 Shift man is on vacation or upgraded due to a vacation, and the 21 Shift man on his regular schedule would be extra or filling a regular Sr. Helper's job, no one will be doubled to work the 21 Shift as an extra man or as a Sr. Helper; and in this case the 21 Shift will not be filled.

2. Except when he is on vacation or on vacation relief (upgraded due to a vacation), no employee will be upgraded to replace the 21 Shift man when the 21 Shift man is scheduled to be extra.

3. If there is a vacancy of seven days or less in a shift in any section of the Operating Department, which vacancy is not the result of an employee taking his vacation, and there is a 21 Shift man, or are 21 Shift men, on duty, who on their regular 21 Shift schedule are not relieving an employee, such 21 Shift man or men in that section shall be designated to fill such vacancy or vacancies.

4. When there is a vacancy of seven days or less on any shift in any section of the Operating Department which is not the result of a vacation, and there is not a 21 Shift man available to fill the vacancy as outlined above, and there is a man available in the relief pool who can be used for replacement, the vacancy will be filled by the employee working on the same shift (graveyard, day, or evening shift) in the same section who is the senior man in the next lower classification until only the lowest classification in that section is left vacant, which vacancy shall be filled by assignment by the Company from the relief pool.

When there is a vacancy of seven days or less on any shift in any section of the Operating Department which is not the result of a vacation, and there is not a 21 Shift man available to fill the vacancy as outlined above, and there is not a man in the relief pool who can be used for replacement, the vacancy shall be filled by doubling a man in accordance with Sub-section 7 below.

5. In the event a temporary vacancy, not a vacation, exists for a period of more than 7 days but less than 30 days, the senior employee in the next lower classification in that section shall be temporarily promoted on the eighth day until only the lowest classification in that section is left vacant; and such temporary vacancy shall be filled by a pool man until the vacancy has existed for a period of 30 days, when it shall be posted for bidding and filled in accordance with the provisions of Section 7 above.

6. Any vacancy of thirty days or less in the lowest classification of any section of the Operating Department shall be filled as provided above by assignment of an employee from the relief pool. Such employee so assigned from the relief pool shall receive the regular rate of pay being received by him immediately prior to the assignment with the provision, however, that if such employee so assigned from the relief pool is assigned to fill a job higher than a Sr. Helper's classification in that particular section, such employee shall receive the rate of the job so temporarily filled by him, subject to Section 16 of this Article.

7. The following method shall be used for determining the employee to be used for working a double shift (this procedure does not cover employees of the Laboratory who are covered under Section 8, Sub-section 13):

First Step.

When an employee fails to report for duty as scheduled in any shift and a replacement can be secured from the relief pool, the employee in that section on that shift will, if upgrading is required, be upgraded to fill the vacancy.

Second Step.

If it is impossible for the foreman to secure a replacement from the relief pool, the employee who was not relieved shall be given the first opportunity of working the double shift.

Third Step.

If the employee not relieved does not desire to work the double shift, then the senior employee of the same classification on the combination of shifts in that section going off duty shall next be given the opportunity to work the double shift.

Fourth Step.

If there is no employee of the same classification on the combination of shifts in that section going off duty who wishes to work the double shift, then the senior employee in the next lower classification on the outgoing shift in that section will be given the opportunity to work the double shift.

Fifth Step.

When there is no employee on the combination of shifts in that section who desires to work the double shift as outlined in Step 4, the employee who did not receive relief will be required to work until a relief is called unless he has a legitimate excuse. If he has such excuse, the foreman will choose the employee going off shift who, in

his opinion, is least inconvenienced and require him to work until a relief is obtained. When there is no man in the relief pool available to relieve and it is necessary to call a man out for duty, the relief man for the employee who is absent or is going off shift shall be first called out. If he cannot be contacted, the oldest man within the classification of the absent employee who is off duty shall be called next and so on until a relief is found, provided that no man shall be allowed to work more than 16 hours in 24 consecutive hours. If no man is available within the same classification the next lower classification will then be called.

Doubling of an employee to work on a job of a lower classification will not be done except in cases of extreme emergency as determined by the foreman.

8. Any employee who has been off duty due to illness or injury will be required to give his supervisor, 8 hours' notice of his intention to return to work or secure permission of the Company to return to work earlier.

Any employee who has been off on an unauthorized absence not due to illness or injury shall not be allowed to return to work without giving eight hours' notice of his intention to return to work.

9. In the event of a vacancy occurring during a shift after the shift change is completed, such as an employee having to go home due to illness, and there is not a 21 Shift man working extra or a relief pool man who can be used for replacement, the vacancy shall be filled by calling out the relief man for the employee who is absent. If this man is not available, the job will be filled in accordance with Step 5 of the doubling procedure.

10. In cases where an employee is not eligible for promotion to a higher classification in accordance with Article X, Section 16, and it is necessary to double a man, the employee who is not eligible for promotion will be considered as not available and doubling will be done in accordance with the procedure as though no one was available to fill the job.

11. When an employee who is temporarily working in a higher classification than his regular classification accepts the opportunity to work a double shift, his classification will revert to his regular classification at the end of his regular shift. Said employee who has doubled onto a shift may exercise his seniority to receive any temporary upgrading that occurs on that shift.

12. When a unit or piece of equipment is temporarily shut down and as a result there is no work for an employee on his regular assignment, such employee may be required to perform the duties of any other job of the same classification or lower classification within his section; and if such employee is absent from work during such temporary shutdown, the Company shall not be required to fill his job.

13. Procedure in Laboratory.

A relief tester, if available, will relieve on each vacancy in the chemical laboratory section and shall perform the duties and receive the wage rate of the classification warranted by his seniority. The relief tester will not be considered available, except for callouts, if he has already worked eight hours within the day or forty hours within the work week. If the relief tester is not available, the following procedure shall govern the selection of a qualified replacement:

(a) Two lists will be maintained by the Steward to determine the employee's eligibility for callouts. One list will be for chief testers and one for testers. In the event it is impossible for an employee to accept a callout because of his work schedule, the next employee in line on this list is to have the opportunity to fill the callout. Whenever a callout is accepted and more than four hours are worked, that employee's name shall be placed at the bottom of the callout list. When callout is possible but refused, that employee's name will be moved to the bottom of the list; however, no junior tester will be eligible for callout if there is a junior tester already on shift, or no two junior testers will be eligible for callout on any one shift.

(b) It is understood that no female employee will work a double shift except in case of emergency.

(c) The senior employee coming on shift will relieve the senior employee going off shift.

(d) In the event an employee's relief fails to report for duty as scheduled and has not given at least four hours' notice, the employee not receiving relief shall be given the first opportunity to work the double shift.

(e) If the employee not receiving relief does not desire to work the double shift, then the employee of the same classification with the most seniority who is scheduled to go off shift will be given the opportunity to work a double shift.

(f) If the employee with the most seniority does not desire to work the double, then the employee of the same classification or lower next in order of seniority who is scheduled to go off shift will be given the opportunity of working the double shift, and so on until a relief is found.

(g) If no employee scheduled to go off shift desires to work the double, then the employees going off shift will mutually agree as to which one of them shall work the double shift. If the employees cannot agree, then the supervisor will choose the employee going off shift who, in his opinion, is least inconvenienced, and require him to work the double shift until a replacement can be secured from the callout list.

(h) In the event an employee gives the supervisor at least four hours' notice that he will not report for duty as scheduled, the vacancy will then be filled by obtaining a relief worker by contacting the employee on top of the callout list. If the employee on top of the list cannot be contacted, or is not available, or refuses the callout, then the employee next in order will be contacted, and so forth until a relief worker is found.

(i) The above procedure shall be operated in the ammonia (including gas reform and water) and main (including nitric acid) laboratories independently of each

other and the steward in each laboratory shall maintain his particular callout list.

(j) When the chief tester in nitric acid or gas reform laboratory is absent, the vacancy will be filled by the senior tester in the applicable laboratory with the most seniority.

13. Each employee returning to the service of the Company from an authorized leave without pay, or from sick leave, shall resume his duties on the basis of uninterrupted service on the job from which he left. Each employee who has been advanced within the section because of the absence of such employee on leave shall be returned to the job and same numbered shift from which he was advanced by reason of such authorized leave. The employee who was filling the job in the lowest classification within the section because of the absence of such employee on leave shall be returned to the Company Relief Pool and retain his accrued seniority within that section as provided in Sub-section (c), Section 4, Article X.

Section 8A.

(Section seniority shall govern in any of the following:)

(a) Any time a new job is established within a section the employee with the most seniority within the classification of the new job will have a preference of normally working on that job. However, if a straight day job is established in any section the oldest employee within the section shall have the right to the job if he so desires regardless of the classification of the new job.

(b) Any time a shift within a classification becomes vacant the employee within that classification who is the oldest in seniority shall have his preference of said shift.

(c) Any time that it becomes necessary for an employee to be demoted to a lower classification, he shall be given an opportunity to pick his shift within the classification in accordance with his seniority.

(d) Any time an employee is displaced from his shift by an older employee, he in turn shall have the right to displace any other employee in accordance with his seniority.

(e) Any shift changes made in accordance with this section shall be made on the Monday following the determination of employees' choices and will be made without involving any overtime pay.

Section 9. Reduction of Forces.

Step 1.

When there is a reduction in the number of employees in any section within a department, section seniority will apply with respect to any demotion which results therefrom, and all employees to be transferred out of that section will be transferred to the applicable pool.

Step 2.

All layoffs will be made in reverse order of departmental seniority. The employee last employed in the department where the layoff occurs shall be the first person laid off in that department in the event there is a reduction in the number of employees therein.

Step 3.

A number of regular jobs in the department, equal to the number of men transferred to the pool by the operation of Step 1 and not laid off, shall be declared vacant, which jobs shall be those to which men with the least departmental seniority are assigned. Each job so declared vacant shall be posted for bid as provided in Section 7 of this Article X.

Only those employees assigned to those jobs, either permanently or temporarily, when those jobs are declared vacant, and the employees transferred to the pool by the operation of Step 1 above and not laid off, will be eligible to bid on those jobs.

Each employee occupying one of the jobs which is declared vacant and is posted for bid will be considered to have bid on each of the jobs posted.

The successful bidder in each case shall be determined on the basis of departmental seniority only.

Section 10. Eligibility for Seniority.

An employee shall be first entitled to seniority when he has been continuously employed for 45 days within the bargaining unit, his seniority dating from the date of the beginning of such employment.

The Company shall have the right to lay off or discharge, without cause, any employee who has not worked in the bargaining unit a sufficient length of time to be entitled to seniority, and such action on the part of the Company shall not be subject of a grievance on the part of the Union or the employee involved under any provision of this agreement.

Section 11. Status of Employees Laid Off.

The accrued seniority, both departmental and sectional, of an employee who has been laid off through no fault of his own shall continue to exist as of the date of his layoff for a period equal to his length of service, but in no event shall it be less than 180 days or more than two years from the date upon which he has been laid off.

Section 12. Seniority Lists.

Seniority lists shall be compiled and be kept at all times available to the Workmen's Committee, and Workmen's Committee shall also have access to daily time reports to verify disputed seniority lists and service records.

Section 13. Seniority—Outside Assignments.

(a) Any employee, after having established seniority under the provisions of this agreement, who is temporarily assigned to another job by the Company, outside of the bargaining unit, shall continue for not more than 90 days to accrue seniority on his regular job during such period of temporary assignment. If such employee does not return to the bargaining unit before the expiration of the 90-day period, he shall forfeit his rights to seniority within the bargaining unit unless his period of assignment out

side the bargaining unit is extended by mutual agreement of the company and the union.

Section 14. Discharges and Reemployments.

The last employee hired in any department shall be the first employee in that department to be laid off and the last employee in a department laid off shall, if he still has seniority, be the first employee re-hired in the department.

An employee who has worked in a department sufficiently long, to be entitled to seniority in that department and who was laid off through no fault of his own, has kept his current address on file with the Company and continues to be entitled to seniority under the terms of this contract, shall, subject to the provisions of the paragraph immediately preceding, be given first opportunity for re-employment.

If reemployment is available for any such person, the Company shall so notify him by letter (with copy of such letter to Chairman of Workmen's Committee), addressed to him at his address then on file with the Company, and he shall be allowed seven days from the date upon which said letter was mailed or until he no longer retains his accrued seniority as provided in Section 11 of this Article X, whichever is the shorter period, in which to notify the Company in writing of his desire to return to work. In the event he delivers such notice, he shall be allowed seven days from the date of the delivery thereof to report for work; provided, however, if the employee involved is, on the date which he would otherwise be required to report for work, totally disabled to work, he shall, on or before that date, deliver to said Company a statement in writing from a licensed physician stating that he is so disabled, in which event the period within which he shall be permitted to return to work shall be extended 90 days.

Section 15. Job Posting Procedure.

All jobs posted for bid in accordance with the provisions of Section 7 of this Article X shall be filled in accordance with the following procedure:

(a) The Company shall post promptly and keep posted for fifteen (15) days notice on appropriate bulletin board of any vacancy. It shall be the duty of any employee, who feels himself entitled to such job on account of his seniority, to file his signed bid in the manner hereinafter stated.

(b) In order to be considered valid, a bid must be signed, enclosed in a sealed envelope, the original must be deposited in locked box marked "CIO Bids for Company" and the duplicate must be deposited in locked box marked "CIO Workmen's Committee". Each of said boxes will be provided at or near the main entrance gate to the operating area.

Section 16.

Notwithstanding any other provision of this Article X, it is now agreed that,

(a) An employee regularly assigned to the lowest classification in any section shall not be eligible for promotion to a higher classification in that section, either temporarily or permanently, until he has worked for at least 10 days in that section. An employee shall not be eligible for promotion to the Senior Operator classification until he has completed three months' service in that section.

(b) No employee from the Relief Pool, temporarily assigned to a job in a section, shall be entitled to receive a temporary promotion in that section unless (i) he has worked in that section at least ten days within the period of 14 days immediately prior to the vacancy therein which is to be temporarily filled, or (ii) on said date has worked in that section an aggregate of 10 days within the six months immediately preceding said date.

ARTICLE XI

Physical Examinations

Section 1. Periodical Examinations

The Company may from time to time require all employees to have periodical physical examinations by a doctor selected by the Company. However, as long as an employee is physically fit such examination shall not be used as a cause for termination. Each employee shall receive his regular rate of pay for all time required for him to be examined at the request of the Company.

Section 2. In the case of an employee being absent from work due to illness or physical impairment, he may be required to present a certificate of physical fitness, signed by a licensed physician, before being readmitted to work. This rule, however, shall not limit the right of the Company to require physical examination by a physician in the Company's service in exceptional cases of constantly recurring absence from duty.

Section 3. Notwithstanding any of the provisions of Article II or Article II of this agreement, in case a dispute arises over the physical fitness of an employee to return to work or continue to work, a board of three (3) physicians shall be selected, one by the Company, one by the employee, and one selected by the two so named. The decision of the majority of this board shall be final and binding.

ARTICLE XII

Union Dues

Upon receipt of a signed authorization by an employee in the form provided herein, requesting deductions from his or her wages of his or her monthly Union dues, the Company agrees to honor such authorization according to its terms during the life of this agreement. The form of such individual authorization shall be as follows:

"You are hereby requested and authorized to deduct from wage due me and payable on the first regular pay

day of each month, the sum of \$_____ being my monthly dues to Oil Workers International Union, C.I.O., Local 434, and you are hereby authorized and directed to pay the amount deducted to Local Union No. 434 for my account on or before the 15th day of the month following the calendar month for which said deductions are made."

ARTICLE XIII

Discharge

Section 1. An employee shall not be discharged, if physically and mentally capable of continuing his duties, on account of any accident unless the accident was caused by negligence, carelessness or malicious intent of the employee.

Section 2. The Company shall expect all of its employees to adhere to its rules and regulations.

ARTICLE XIV

Military Leave

Section 1. Leave of Absence.

An employee of the Company who is drafted for service in the Armed Forces of the United States under The Selective Service Act of 1948, is inducted into that service as a member of the Reserve, or of a National Guard Unit, or volunteer for such service, shall be granted a military leave of absence. A military leave of absence shall be granted when the employee receives his final orders to report for duty in the Armed Forces, after having taken any prior examination to determine whether or not he shall be inducted into military service. If after receiving a certificate of satisfactory service from the Armed Forces such an employee makes application for reemployment and is reemployed by the Company under the provisions of the Selective Service Act of 1948, he shall be entitled to all rights provided in that Act.

Section 2. Pay in Lieu of Vacation.

Each such employee who is entitled to a vacation under the vacation policy of the Company at the time he leaves to enter the Armed Forces who elects not to take the vacation, but to receive pay in lieu thereof shall, upon furnishing to the Company a certificate of his commanding officer establishing the fact that he had been inducted into the military service, be paid the amount of money he would have received had he taken his vacation just prior to the beginning of his military leave.

Section 3. Military Bonus.

Each such employee shall, upon receipt by the Company of a statement of his commanding officer, stating in writing that he has been inducted into the Armed Forces of the United States, receive a bonus equivalent to one month's pay at straight time rate, based on his regular rate and normal schedule of hours, at the time he begins his military leave.

Section 4. Group Insurance Benefits.

(a) The Group Life Insurance of the employee on military leave will continue for two months from the date of the beginning of the leave with the cost of such insurance borne by the Company. All other Group Insurance Benefits of the employee terminate with the commencement of his leave, however, an arrangement will be made for him to again participate without a waiting period upon his return from the service and reemployment by the Company.

(b) The Hospitalization and Surgical Benefits for the dependents of each such employee shall be continued at the expense of the Company while the employee is in military service.

Section 5. Group Annuity Plan.

The contribution of each employee granted military leave shall be suspended at the time he leaves the Company to enter the military services of the United States and they will stand to his credit until his return. All rights under

the Company's Annuity Plan shall be suspended upon his entering the military service and an arrangement will be made for him to again participate without a waiting period upon his return from the service and reemployment by the Company.

Section 6. The provisions of this Article XIV shall be given effect as of July 27, 1950.

ARTICLE XV

Bulletin Boards

The Company shall cause a bulletin board to be placed on the property where it may be seen by employees entering and leaving their place of employment.

Such bulletin board may be used by the Workmen's Committee of the Oil Workers International Union for any matters pertaining to its membership provided the material posted shall contain nothing of a political or controversial nature nor reflect upon the Company or any of its employees or products.

This bulletin board will be locked with keys released to the Chairman of the Workmen's Committee, the Chief Steward, and the Chairman of the Lion Oil Group, of Local 434, of the Union and the Company.

ARTICLE XVI

Inspection of Equipment and Safety Hazards

Section 1. Inspection of all equipment throughout the plant or place of employment shall be continued by the Superintendent or other persons designated by the Company from time to time. An inspection of any equipment may be secured upon the recommendation of the Workmen's Committee or the workmen employed on such equipment. The Union Workmen's Committee may make written suggestions to the superintendent or his representatives as to the elimination of hazards in order to prevent accidents.

Section 2. No employee shall be required to perform services that seriously endanger his physical safety, and

his refusal to do such work shall not warrant or justify discharge. In all such cases an immediate conference between Company and Union shall be held to settle the issue in question.

ARTICLE XVII

Company—Union Conferences

The Union Workmen's Committee and the Company shall hold a regular meeting at least once each month. These meetings shall be held at 2:00 p. m. on the first Tuesday of each month. In the event the aforementioned day occurs on a holiday, the day following the holiday shall be the day of the meeting.

The Chairman of the Workmen's Committee when scheduled to work the graveyard shift on the day of any regular monthly meeting will be excused from work on the graveyard shift with pay.

ARTICLE XVIII

Severance Pay

Any employee covered by the terms of this agreement whose services are terminated through no fault of his own shall be granted severance pay after one year of continuous service of one week's pay, equivalent to forty hours straight-time pay at his regular rate; after two years service, two weeks pay equivalent to eighty hours straight-time pay at his regular rate.

ARTICLE XIX

Contract Work

It is agreed that any work of operations as covered by this agreement will not be contracted out if the Company has men and equipment available for such work.

ARTICLE XX

Discrimination

There shall be no discrimination by the Company against any employee with respect to any conditions of employment on account of his membership in this labor union or on account of any activity undertaken in good faith in his capacity as a representative of other employees. The Union shall not discriminate against any employee who is not a member of the Union.

ARTICLE XXI

Leave of Absence

Section 1. Personal Business.

If an employee desires to be off on personal business (not emergencies), he may do so with written consent of the Company signed by the Plant Manager or Plant Superintendent so long as he does not desire to be off work over two work weeks and provided that he gives the Company forty-eight hours' notice of his desire to be absent and the length of time he desires to be off. Upon completion of such leave he will resume employment on the basis of uninterrupted service. The provisions of this Section 1 shall not be extended to more than two employees in each section at any one time.

Section 2. Union Business.

(a) The Company shall grant a leave of absence, without pay, extending not longer than 30 days to employees in order to engage in any work pertaining to the business of the Union, local or otherwise, upon sufficient notice so that the employee's absence will not cause overtime employment. Upon completion of such leave that employee will resume employment on the basis of uninterrupted service. This privilege will not be extended to more than four employees at any one time. This privilege will not be extended to any one employee for more than an aggregate of 60 days in any one calendar year.

(b) Notwithstanding the provisions of the foregoing subdivision (a) the Company agrees that upon written request of the President of Oil Workers International Union addressed to the Company to that effect, one employee will be given a leave of absence not to exceed one year, without pay, to work as an employee of the Union, or any of its affiliates, with the provision, however, that such leave of absence shall, upon the written request of the President of Oil Workers International Union addressed to the Company to that effect, be extended for a period of time not to exceed one additional year.

It is provided, however, that not more than one employee at a time may be on leave of the character mentioned in the paragraph immediately preceding.

No employee shall be granted a leave of absence pursuant to this subsection who has not, immediately preceding the date upon which such leave of absence is to begin, worked for a period of one year continuously.

Upon completion of the leave of absence mentioned within this subsection, or upon completion of the extended term of such leave of absence, if the term thereof is extended pursuant to this sub-section, the employee involved will resume employment on the basis of uninterrupted service; provided such employee reports to the Company for work within one day following the expiration of said leave of absence, or within one day following the extended term of such leave of absence if the term thereof is extended pursuant to this sub-section. An employee who fails to report for work within one day following the end of such leave of absence shall thereby forfeit all of his seniority and his services with the Company shall be terminated provided, however, if the employee involved is, on the date which he would otherwise be required to report to work, totally disabled to work, he shall, on or before that date, deliver to the Company a statement in writing from a licensed physician stating that he is so disabled, in which event the period within which he shall be permitted to return to work shall be extended 30 days.

Section 3. Sickness or Accident.

If an employee who has established seniority is out of service due to occupational injury or occupational disease suffered or contracted while he is in the employ of the Company, he shall retain his seniority accrued at the date of his disability and continue to accrue seniority during the period of his disability as a result thereof, notwithstanding any provisions of Article X. If an employee who has established seniority is out of service due to non-occupational injury or disease suffered while he was in the employ of the Company, he shall retain his accrued seniority for a period of five (5) years and will accrue seniority in the department in which he was last regularly employed for a period of one year.

Under either of the above conditions, if an employee should accept an equal or better job elsewhere, his seniority shall be cancelled.

ARTICLE XXII

Jury Duty

Each employee of the Company who is called for service upon any grand jury or petit jury shall be paid by the Company for each day which he serves upon said jury a sum equal to the amount which he would have earned if he had worked for the Company on that day for the number of hours of his regular work schedule at straight time, with the provision that no such payment shall be made to an employee for jury service on any day during which in accordance with his regular work schedule he would not have worked for the Company.

ARTICLE XXIII

Wages and Classifications

The hourly wages, set forth in Exhibit "B," hereto, to be paid to each employee in each classification shown on said exhibit shall remain in effect, without change from 7 a. m. April 29, 1950, to 7 a. m. April 29, 1951. The classi-

fications shown on said exhibit shall also remain unchanged during that period.

Notwithstanding any other provision of this agreement to the contrary, the question of wages to be paid shall not be the subject of arbitration. "Wages" as used in this Article shall be construed to include any allowance which results in an increase in the compensation of an employee, or of employees, as set forth in Exhibit "B".

ARTICLE XXIV

Validity

If any court shall hold any part of this agreement invalid, such decision shall not invalidate the entire agreement.

ARTICLE XXV

Privileges

Any privilege or benefit not herein mentioned and now being enjoyed by employees in the bargaining unit shall continue in accordance with the policy of the Company now existing with respect thereto.

ARTICLE XXVI

Any notice required to be given an employee under Article IV, Section 3, may be given by posting a notice on the bulletin board of the Union with a copy of said notice to the Chairman of the Workmen's Committee. If any employee named in such notice is on vacation or on leave of absence, a copy of said notice will be mailed in a sealed envelope, registered, and addressed to him at his address as shown on the records of the Company. Each employee named in any such notice shall be deemed to have received the notice at the time said notice is posted on the bulletin board or mailed to him at his home address.

Any notice to the Company provided herein may be given by depositing same in the U. S. mail in a sealed envelope, registered, postage prepaid, and addressed to Lion

Oil Company, Lion Oil Building, El Dorado, Arkansas,
Attention: T. M. Martin, President.

Any notice to be given to the Union may be given by depositing the same in the U. S. mail in a sealed envelope, registered, postage prepaid and addressed to the Oil Workers International Union, C. I. O., 302 Trimble Building, El Dorado, Arkansas, with a copy of the notice to the Secretary, Local 434, Oil Workers International Union, 302 Trimble Building, El Dorado, Arkansas:

ARTICLE XXVII

During the term of this agreement, each person in the bargaining unit shall be allowed a leave with pay of one day to attend the funeral of his or her father, mother, husband or wife, grandparents, father-in-law, mother-in-law, brother, sister, brother-in-law or sister-in-law, half brother, half sister, or child.

ARTICLE XXVIII

During the term of this agreement, the Company shall maintain in effect an amendment to its sickness benefit plan which was in effect as of 7 a. m. April 29, 1950, which amendment shall be to the following effect:

If an employee is totally disabled to work, for a period of 7 successive full calendar days, was eligible for benefits under the sickness benefit plan at the time such disability began, and furnishes proof of such illness and the length thereof, he shall, as of the first full calendar day of such disability, be entitled to the applicable benefits set forth in the schedule of benefits on page 8 of said sickness benefit plan as published by the Company in its pamphlet with respect thereto, dated July 1, 1945. A calendar day shall for this purpose begin at 11 p. m. and end at 11 p. m., provided that if on his first day of illness the employee has lost a full day of work, the first day will be considered a calendar day even if it is not such in fact.

ARTICLE XXIX

The Company will procure and maintain in effect during the term of this agreement, for each employee in the bargaining unit who is from time to time participating in and continues to participate in the Company's plan for such insurance for employees in that unit, a policy of insurance with Metropolitan Life Insurance Company providing allowances to that employee with respect to the confinement of a dependent of that employee in a hospital as a result of illness, with limits of \$5.00 per day for hospital room up to 31 days, surgical fees up to a maximum of \$150.00, and miscellaneous hospital expenses up to \$50.00, all in connection with any one separate illness of the dependent. A "dependent" within the meaning of this Article shall be a dependent as defined by said insurance company in the regular form of policy issued by it in such cases.

The Company will use its best efforts to cause said insurance company to make said policy effective on June 1, 1950. The Company shall pay the entire cost of providing the insurance hereinbefore specifically mentioned in this Article.

If within 90 days of the date of this agreement 75% of all employees then employed in the bargaining unit desire to increase their benefits under their group insurance hereinbefore mentioned to a limit of \$6.00 per day for hospital room up to 31 days, up to \$175.00 for surgical fees, and up to \$60.00 for other hospital expenses, with respect to any one illness of an employee which results in his confinement in a hospital, the Company will arrange for the insurance with respect to the dependents of each employee as hereinbefore mentioned to be increased to similar amounts of benefits.

The Company shall pay the full cost of such increased insurance for the dependents of an employee, and the employee shall pay the full cost of the increase in such insurance for himself.

IN WITNESS WHEREOF, this instrument is executed on the 29th day of April, 1950 to be effective as of the 29th day of April 1950, at 7 a. m.

Lion Oil Company
by R. E. Meinert
Vice President

Approved:

J. B. Rogerson

Manager of Manufacturing
Oil Workers International Union C. I. O.
by W. M. Akin

Approved:

E. P. Shelton

T. H. DeLone

W. O. Cheatham

W. J. Whitworth

J. H. Young

Workmen's Committee

LION OIL COMPANY CHEMICAL DIVISION PROMOTION CHART

(EXHIBIT 'A')

FOR

BARGAINING UNIT REPRESENTED BY OUII-CIQOPERATING DEPARTMENTDEPARTMENT SENIORITY
SECTION SENIORITY

CHEMICAL LAB. SECTION	GAS ENG. OPER. SECTION	WELLS & WATER SECTION	GAS REFORM SECTION	SYNTHESIS CU. LUG SECTION	COMPRES- SION SECTION	REFRIG- ERATION SECTION	WATER SCRUBBER SECTION	STORAGE & SHIPPING SECTION	NITRIC ACID SECTION	PELLETING PLANT SECTION	SULFURIC ACID PCT SECTION	AMMONIUM SULFATE PLANT SECTION	SOLUTION PLANT SECTION
	1	1	1	1	1	1	1	1	1	1	1	1	1
CHIEF TESTER	2	2	2	2	2	2	2	2	2	2	2	2	2
SENIOR TESTER	3	3	3	3	3	3	3	3	3	3	3	3	3
TESTER	4	4	4	4	4	4	4	4	4	4	4	4	4

WHEN EMPLOYED DIRECTLY INTO CHEMICAL
LABORATORY SECTION EMPLOYEE WILL BE
REQUIRED TO WORK THE FIRST 45 DAYS
AS A JUNIOR TESTER

RELIEF POOL

- 1 SENIOR OPERATOR
- 2 OPER. OR CHIEF TESTER
- 3 JR OPER OR SENIOR TESTER
- 4 SR HELPER OR TESTER
- 5 HELPER OR JR TESTER

LABOR DEPARTMENT

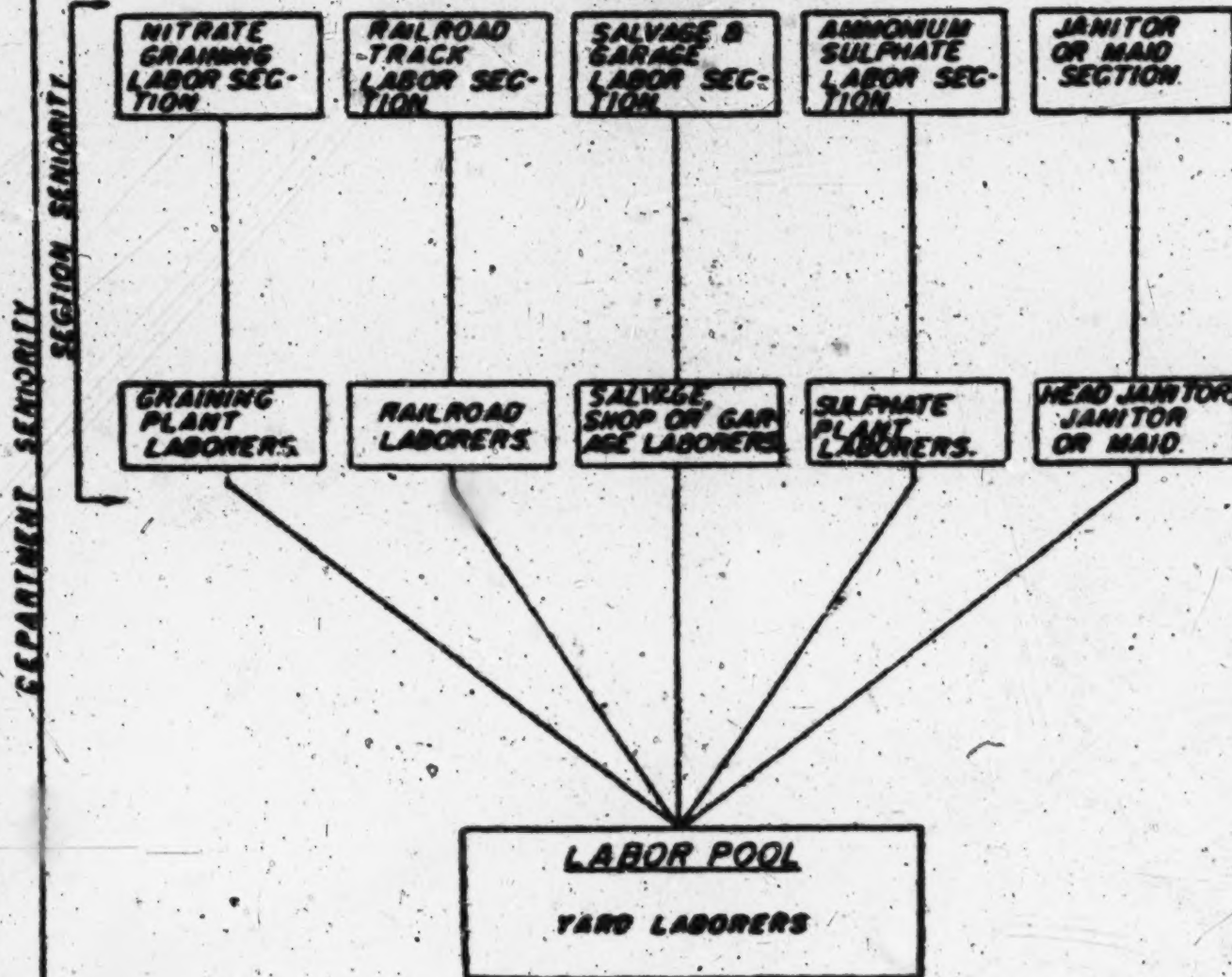


EXHIBIT "B."

(as amended)

WAGE RATES AND CLASSIFICATIONS

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
Senior Operator	\$2.14
Operator	2.00
Junior Operator	1.87
Sr. Helper (over one year in bargaining unit)	1.74
Sr. Helper (46 days to one year in bargaining unit)	1.66
Helper (first 45 days)	1.32
Chief Tester	2.00
Sr. Tester (after 90 days as tester)	1.87
Tester (after 45 days in Operating Department)	1.66
Jr. Tester (first 45 days in Operating Department)	1.32
Nitrate Graining Laborer	1.45
Sulphate Plant Laborer	1.45
Railroad laborer	1.38
Salvage Laborer	1.38
Garage Laborer	1.38
Head Janitor	1.38
Janitor (after one year in bargaining unit)	1.28
Janitor (after 6 months in bargaining unit)	1.25
Janitor (first 6 months in bargaining unit)	1.10
Maid (after one year in bargaining unit)	1.28
Maid (after 6 months in bargaining unit)	1.25
Maid (first 6 months in bargaining unit)	1.10
Yard Laborer Operating Air Tool	1.38
Yard Laborer (after one year in bargaining unit)	1.28
Yard Laborer (after 6 months in bargaining unit)	1.25
Yard Laborer (first 6 months in bargaining unit)	1.10

Note: The hourly wage rate applicable to each classification, as said rate is listed in the foregoing tabulation

General Counsel's Exhibit No. 3

of Wage Rates and Classifications, includes a sum which has been included therein in lieu of the Shift Change Allowance which has heretofore been in effect.

Shift Differential

In addition to the foregoing hourly rates, there shall be paid a shift differential of four (4) cents for each hour worked on an evening shift and six (6) cents for each hour worked on a graveyard shift. For the purpose of this agreement the term "evening shift" shall mean the period beginning at 3:00 p. m., and ending at 11:00 p. m., and the term "graveyard shift" shall mean the period beginning at 11:00 p. m. and ending at 7:00 a. m. the following day.

Clothing Allowance

In addition to the foregoing hourly rates, there shall be paid a clothing allowance of 2¢ or 3¢ per hour for each hour worked by an employee who works in the jobs listed below:

<u>Section</u>	<u>Job</u>	<u>Clothing Allowance</u> <u>Per Hour</u>
Storage and Shipping Solutions	Nitrate Rack	2¢
	Neutralizer Operator	2¢
	Correction Operator and Helper;	
	Solutions Sr. Operator, Operator, Jr. Operator and Helper	2¢
Ammonium Sulfate	Bagging Crew	2¢
	Senior Operator	3¢
	Dryer Operator	3¢
	Centrifuge Operator	3¢
	Sulfate Helper	3¢
	Laborer	2¢
	Silo Jr. Operator	2¢
	Floor Laborer	3¢

General Counsel's Exhibit No. 3

69

Sulfuric Acid	Junior Operator	3¢
	Senior Operator	3¢
Nitric Acid No. 1	Senior Operator	2¢
	Panel Operator	2¢
No. 2	Boiler Operator	2¢
	Junior Operator	3¢
	Senior Operator	2¢
	Operator	2¢
	Helper	2¢
Pelleting Plant	Air Scrubber Solution Operator	3¢
	Bagging Crew	2¢
	Drying Section, Senior Operator and Jr. Operator	3¢
	Concentrator Operator	2¢
	Neutralizer Operator	2¢
	2nd Floor Operator	2¢
	2nd Floor Laborer	2¢
	Shot Tower Helper	2¢
	Graining Plant Laborer, Shot Tower	3¢
	Clean Up Labor on Main Floor	3¢
	All Other Laborers	2¢
	Yard Laborer—Regular Trash Pickup Crew serving the following sec- tions: Storage and Shipping, Solu- tions, Ammonium Sulfate, Sulfuric Acid, Nitric Acid No. 1, Nitric Acid No. 2, and Pelleting Plant	2¢

Each person who, at 11:00 p. m. October 22, 1950, was employed as a "helper (first 45 days)", "Jr. tester (first 45 days in Operating Department)", "Janitor (first 6 mos. in Bargaining Unit)", "maid (first 6 mos. in Bargaining Unit)" or "yard laborer (first 6 mos. in Bargaining Unit)" shall be paid, while working in such classification 10¢ an hour in addition to the hourly wage rate in the foregoing schedule applicable to that classification.

The wage rates provided in this Exhibit B shall be given effect as of 11:00 p. m. October 22, 1950.

In addition, each person who was employed by the company in the bargaining unit at 7 A. M., April 29, 1950, and is subsequently, during the term of this Agreement, employed in any one of the following classifications:

Sr. Helper (46 days to one year in Bargaining Unit)

Tester (After 45 days in Operating Department)

Janitor (First six months in Bargaining Unit)

Maid (First six months in Bargaining Unit)

Yard Laborer (First six months in Bargaining Unit) shall be paid on the basis of the hourly rate for that classification above set forth in this Exhibit "B" plus eight cents (8¢). Each such person who works during the term of this contract as a:

Janitor (After six months in Bargaining Unit)

Maid (After six months in Bargaining Unit), or

Yard Laborer (After six months in Bargaining Unit) shall be paid on the basis of the hourly rate for that classification set forth above in this Exhibit "B" plus three cents (3¢).

Clothing Allowance

(Amendment)

Yard Laborer who, on temporary assignment for work at the Pelleting Plant, works for eight (8) continuous hours or more at said Pelleting Plant _____ 2¢

LION OIL COMPANY

ENGINEERING DIVISION

SHIFT SCHEDULE FOR YEAR 1940

Exhibit "C-1"

	JANUARY							FEBRUARY							MARCH							APRIL						
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8
	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
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	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
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	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
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	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
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	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	
	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	
	10	11	12	13	14	15	16	17																				

SHIFT SCHEDULE FOR SR. OPERATOR

Exhibit C. 2

#21 SHIFT MAN IN WATER SECTION

	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
8 - 4			X	X	X					X	X	X			X	X			X	X		X	X	X	X			X	X	X	X				
4 - 12																																			
12 - 8	X	X																																	
Days Off								X	X						X	X						X	X						X	X					

SHIFT SCHEDULE FOR SR. OPERATOR

Exhibit C-3

21 SHIFT MAN IN POWER SECTION

	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
8 - 4				X	X										X	X						X	X						X	X					
4 - 12								X	X	X																									
12 - 8	X	X	X																																
Days Off															X	X																			

General Counsel's Exhibit No. 3

EXHIBIT "C-4"

SHIFT SCHEDULE — AMMONIA LOADER

8-4	M	T	W	T	F	S	S
	A	A	A	A	A	B	B
	B	B	B				
Days Off				B	B	A	A

SHIFT SCHEDULE FOR EMPLOYEES WORKING IN
THE GAS REFORM AND NITRIC ACID
LABORATORIES

EXHIBIT C-5

	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S
Gas	1	1	1	1	3	1	-	3	1	1	1	1	1	-	1	1	1	1	1	3	-
Reform																					
HNO ₃	3	2	2	2	2	2	-	2	2	2	2	2	3	-	2	2	2	2	3	2	-
	3	3	3				-	3	3	3				-	3	3	3				-

WORK SCHEDULE FOR JANITORS IN OPERATING AREA

Exhibit C- 6

<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>
<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	
<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>2</u>	
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General Counsel's Exhibit No. 3

WORK SCHEDULE FOR EMPLOYEES OF THE LABOR
DEPARTMENT OTHER THAN JANITORS IN
THE OPERATING AREA

EXHIBIT C-7

1. The janitor assigned to the Recreation Club will work on a two-week cycle; one week he will work Monday through Friday, the following week he will work Tuesday through Saturday. His regular scheduled work day will be from 7:00 a. m. to 3:30 p. m. with a thirty-minute lunch period from 11:30 a. m. to 12:00 noon.

2. The janitor assigned to the Staff House will be on a two-week work schedule; one week he will work Monday through Friday, the following week he will work Tuesday through Saturday. His regular scheduled work day will be from 7:00 a. m. to 3:30 p. m. with a thirty-minute lunch period from 11:30 a. m. to 12:00 noon.

3. The janitor assigned to the Change House will work a regular schedule of 10 days on 4 days off. His regular scheduled work day will be from 7:00 a. m. to 3:30 p. m. with a thirty-minute lunch period from 11:30 a. m. to 12:00 noon.

4. The janitors who are working days in the Administrative Area will be divided into two groups. One group will work a regular schedule of Monday through Friday, the other group will work Tuesday through Saturday. Their normal work day will be from 7:00 a. m. to 3:30 p. m. with a thirty-minute lunch period from 11:30 a. m. to 12:00 noon.

5. The maid shall work a regular schedule of Tuesday through Saturday, and her normal work day will be from 7:00 a. m. to 3:30 p. m. with a thirty-minute lunch period from 11:30 a. m. to 12:00 noon.

6. The janitors assigned to the evening shift, who clean up the Administrative Area, will work a regular schedule of Monday through Friday, and their normal work day will be from 4:00 p. m. until 12:00 midnight. These janitors will receive the 4¢ per hour shift differential for this 4:00 p. m. to midnight shift.

7. Employees working in the Railroad Track Labor Section, Salvage and Garage Labor Section, and Labor Pool will normally work five consecutive eight-hour days, Monday through Friday, and will normally begin work at 8:00 a. m. and end at 4:30 p. m., with a thirty-minute lunch period from 12:00 noon to 12:30 p. m.

#21 SHIFT MAN IN POWER SECTION

Exhibit C-8

78

General Counsel's Exhibit No. 3

	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>	<u>M</u>	<u>T</u>	<u>W</u>	<u>T</u>	<u>F</u>	<u>S</u>	<u>S</u>
8 - 4	X	X						X	X						X		X	X							X	X					X	X	X	X	X
4 - 12										X	X	X													X	X	X								
12 - 8			X	X	X																														
Day Off						X	X	X					X		X	X									X	X						X	X		

EXHIBIT C-9

WORK SCHEDULE FOR MISCELLANEOUS WORKERS
IN THE LABORATORY SECTION

Employees in the Chemical Laboratory Section, who are assigned to the following jobs, will normally work five consecutive days, Monday through Friday. The male employees will work from 8 a. m. to 12 o'clock noon and from 12:30 p. m. to 4:30 p. m. The female employees will work from 8 a. m. to 12 o'clock noon and from 12:45 p. m. to 4:45 p. m.

Glass Blower

Standard Solutions

Day Tester in Main Laboratory

Water Laboratory Tester

General Counsel's Exhibit No. 4.

Copy

OIL WORKERS INTERNATIONAL UNION, C.I.O.
EL DORADO LOCAL No. 434
EL DORADO, ARKANSAS

August 24, 1951

REGISTERED MAIL
RETURN RECEIPT REQUESTED
SPECIAL DELIVERY

Lion Oil Company
Lion Oil Building
El Dorado, Arkansas
Attention: Mr. T. M. Martin, President
Federal Mediation and Conciliation Service
14th and Constitution Avenue, N. W.
Washington 25, D. C.

Gentlemen:

Pursuant to the provisions of the Labor-Management Relations Act of 1947, you are hereby notified that we desire to modify the collective bargaining contract now in effect between your company and this Union, in accordance with the provisions of the agreement.

We are attaching hereto some of the proposed changes which we desire to include in a new contract or as modifications to the present agreement. We shall be glad to and now offer to meet and confer with you for the purpose of negotiating a new contract or modifications to the present agreement.

Copies of this notice are being served upon the Federal Mediation and Conciliation Service, and the appropriate State Agency for the purpose of advising them of this dispute solely because of the alleged requirements of Section 8 (d) (3) of the Labor-Management Relations Act

of 1947, and subject to the validity of all provisions of such Act.

Sincerely yours,

Oil Workers International Union, C.I.O.

By /s/ E. P. Shelton,

Chairman Workmen's Committee

Lion Oil Group Local 434-OWIU-

CIO

UNION'S PROPOSALS

Article III

In the event a grievance arises over a discharge or a lay-off, the first and second step of the grievance procedure may be by-passed.

Saturdays, Sundays and holidays shall be excluded from all time limitations provided in the grievance procedure and arbitration. Provided that in the event either party violates any time limit provided in any step in the grievance procedure the other party shall win the grievance by default.

Add a new section to the effect that in the event any employee who is called before Management for disciplinary purposes shall be permitted to have three union members present at such conference.

Step 5—Paragraph Five

Amend Paragraph Five of Step 5 of Article III so it provides that the loser will pay all of the expenses of the third member of the Arbitration Board. In the event of a split or divided decision, the Arbitration Board shall determine the amount of the cost of the third member of the Arbitration Board that will be borne by each party.

Article IV

Section 1 An employee who is temporarily required to perform, for as much as one hour, work of a classification with respect to which the rate of pay is greater * * *

Section 4 Add the following to this section. No operating employee shall be required to do any work where it is necessary to use any shovels, picks, axe or similar tool.

Article VI

Section 1 Provide for four (4) hours minimum pay in the event of call out.

Section 1 Amend to provide that if a pool man is not found within thirty (30) minutes and an employee is being held over with instructions to double that he shall be entitled to double if he so desires even if the pool man is secured at a later hour after the first thirty (30) minutes has passed.

Section IV Add a new sentence as follows:

If the cafeteria is closed the Company will at its expense furnish the employee with an appropriate lunch. The lunch shall be delivered within two hours after the overtime commences.

Article VIII—Holiday Pay

Add: Washington's Birthday—Col. Barton's Birthday.

Amend second paragraph to provide that two and one-half times the regular rate shall be paid for work performed on any holiday.

Article IX—Vacations

Amend to provide for three weeks vacation after five (5) years of seniority.

Provide that an employee may, upon request, get his vacation check on the Friday prior to the beginning of the vacation.

Delete Section 4.

Article X

Amend to provide for plant seniority to be used in computing vacation time and sick leave.

Section 1. Seniority shall be adhered to in all jobs within a classification, shift, promotions, demotions and lay-off other than discharge for just cause.

Section 6. Amend so that an employee who has been demoted to the pool from any section shall be given preference with regard to temporary assignments to work in the section from which he was demoted in accordance with his seniority.

Section 9. Amend as follows:

The employee with the most departmental seniority shall have the right to displace any employee with less department seniority in any other section in the lowest classification only.

Section 8. Sub-section 13 (a) Add the following sentence—Nor shall there be two Jr. Testers on any one shift.

Section 8, Sub-Section 13 (i)

Delete the following—and the steward in each laboratory shall maintain his particular call out list.

Section 8. (b)

Amend to provide that in the event there are two vacancies on any one shift in the Synthesis Section that there will not be any double set ups that would take both operators off the copper liquor panel board at the same time.

Article XII—Union Dues

Amend second paragraph to read as follows:

"You are hereby requested and authorized to deduct from wages due me and payable on the first regular pay day of each month, the sum equal to my monthly dues as set by Oil Workers International Union-CIO, Local 434, and you are hereby authorized and directed to pay the amount deducted to Local Union No. 434 for my account on or before the 15th

day of the month following the calendar month for which said deductions are made."

Add the following as a new section:

The Company upon proper signed authorization will deduct from an employee's wages, one dollar (\$1) per year payable to OWIU-CIO, Local 434 as a P.A.C. contribution.

Article XVII—Paragraph Two

Amend to provide that each member of the Workmen's Committee who is working graveyard shift will be allowed time off with pay to attend any meetings with Management.

Add a new paragraph to provide that Company will pay for time lost by member of the Workmen's Committee and Union witness in arbitration cases arising under this contract.

Article XVIII—Severance Pay

Any employee covered by the terms of this agreement who is laid off through no fault of his own, or retired, shall be granted severance pay after one year of continuous service of one weeks' pay, equivalent to forty (40) hours straight time pay at his regular rate; after two years service, two weeks' pay equivalent to eighty (80) hours straight time pay at his regular rate.

Article XXI—Public Service Leave

Add a new section to provide for leave of absence for any employee who is elected or appointed to any public office.

Article XXII—Jury Duty

Amend to include coroner jury.

Amend to provide that an employee who is duly subpoenaed to appear in any court will be paid in the same manner as if he was on jury duty.

Article XXIII—Wages and Classifications

Amend Exhibit "B" to provide that Helpers and Senior Helpers shall only be used in the Operating Pool. The regular assigned classifications in any operating section shall be Junior Operator, Operator, Senior Operator and Chief Operator. All present regularly assigned Junior Operators shall be upgraded to Operators. All regularly assigned Senior Helpers shall be upgraded to Junior Operator. A like set up shall be established in the Laboratory Sections.

Amend Exhibit "B"

1. Increase base rate up to 10% above May 1, 1950 level.
2. Add 5¢ per hour to new base rate as an improvement factor increase.
3. Adopt an escalator clause based on the CPI with a 1¢ per hour increase or decrease for each change of .9 in the CPI, with no reduction in base rate.

Article XXVII—Funeral Leave

Add grand-child to list of relative.

In the event of the death of an employee's father, mother, husband or wife, grandparents, father-in-law, mother-in-law, brother, sister, brother-in-law or sister-in-law, half brother, half sister, child, grandchild, grand parents-in-law, son-in-law or daughter-in-law, the employee shall be allowed three days funeral leave with pay. In the event the employee desires additional time off it will be allowed in such event but such additional time off shall be charged against his sick benefits. Provided further that in the event it is necessary for an employee to serve as an active pall bearer he will be paid his straight time rate not to exceed one day.

Article XXVIII—Sick Benefits

Amend to eliminate waiting period.

Article XXIX—Insurance

Amend insurance policy to include coverage for pregnancy.*

Amend to include doctor bill insurance.

Shift Differential.

Amend to provide for 10¢ per hour on graveyard and 6¢ per hour on evening.

Clothing Allowance

Add the following to classification receiving 2¢ and 3¢ clothing allowance:

Garage Laborers

Acid Area Janitors

Oil Recovery Operators—All Grades

Water Treaters in Boiler House

All Laboratory Personnel

#9 Synthesis Sr. Operator

Synthesis Helpers

Upgrading of Classifications

Sulphate Section—Silo Jr. Operator to Operator

Boiler House—Jr. Operator to Operator

Solutions—Solution Operator to Sr. Operator

Reform—Sr. Helpers to Jr. Operators

Labs—Chief Testers to Sr. Operator rate

#2 Nitric Acid—Compressor Operator to Sr. Operator

Shipping & Storage—Nitrate Loading Operator to Sr. Operator and add one Helper per shift.

Main Lab—Add one Chief Tester per shift

Graining Plant—Bagging Operator to Sr. Operator and add one Helper per shift.

Sulfuric Acid—Jr. Operator to Operator

Synthesis—Copper Liquor Operators to Sr. Operator

Savings Plan

It is the Union's desire to establish a savings plan.

A brief outline is attached.

Annuity Plan

It is the Union's desire to make certain modifications and amendments to the plan that the Company presently has in force. Copy is attached.

OWIU-CIO PENSIONS AND SAVINGS PLAN PROPOSALS FOR LION OIL COMPANY EMPLOYEES

PROPOSED AMENDMENTS TO PRESENT ANNUITY PLAN

Termination of Service and Vested Retirement Income Rights.

Group annuities purchased for a participant by his own and company contributions shall be fully vested in and belong to him subject only to the following:

If, after ceasing to be an employee, a person who has less than five (5) years service, elects to exercise his option under the group annuity contract to surrender for cash that portion of group annuity derived from his own contribution, he shall thereupon lose title to all group annuity purchased under this plan with company contributions.

(A participant with five (5) or more years of service may surrender for cash annuities purchased with his own money at any time after termination of employment, but contributions purchased by him with company funds will be carried to maturity and paid to him as an annuity.)

The Plans Future.

The plan shall remain in effect for a period of two (2) years and indefinitely thereafter, subject to the right of the Company or the Union to suspend or terminate the plan after the expiration of the two year period.

In the event the plan is suspended for more than one (1) year or terminated, each participant shall

have the same vesting rights as an employee who is terminated.

Sixty (60) Months Certain Feature.

Amend plan to provide all group annuity income purchased under the plan shall be payable from the annuity commencement date and shall continue for the remainder of the insured's lifetime with the guarantee that if he should die on or after his annuity commencement date, but before sixty (60) monthly annuity payments have been made, such annuity payments shall be continued to his beneficiary until sixty (60) payments in all have been made to the insured and his beneficiary.

Suspension of Contributions.

A participant may voluntarily suspend contributions at any time by written notice to the Company, whereupon he shall be ineligible to resume contributions for a period of six (6) months. In addition, contributions will be suspended automatically if he is absent from work for more than thirty (30) days and receives less than 50 per cent of his normal earnings. Such suspension will not affect his re-entry into the plan at any future date. During suspension an employee who does not withdraw his contributions will lose annuity credits only for the time that he is not participating in the plan.

Early Retirement on Account of Disability.

Amend to provide that upon application by a participant who is, on the basis of medical evidence, permanently and totally physically or mentally incapacitated for work with the Company, shall be retired. In such cases the retirement income credits then accrued to be paid at normal retirement date will be

actuarially reduced and paid as described elsewhere in the plan or the employee may elect to defer annuity payments to a later date but not later than his normal retirement date.

\$65 Monthly Minimum Pension

Amend the pension plan to provide a minimum pension of \$65 per month for any employee who retires on or after his normal retirement date and has participated in the plan for 10 or more years, or for any participant in the plan who may be retired or has been retired, at normal retirement date prior to September 1, 1953 after five (5) years of participation in the plan.

Contributions—Employee—Company

Amend to provide that the Annual rate of retirement income for future service, commencing at normal retirement date, will be computed as $1/2$ of the employee's total contributions actually made during his future service period and each employee joining the plan will, subject to rules governing suspensions, contribute each month the amount indicated in the following schedule:

Earnings Class	Monthly Earnings	Employees Monthly Contributions	Employee Monthly Benefits for each Year of Contribu- tion to the Plan	
			Present Plan	CIO Proposed
1	Under \$125 (Employee's Age 21 to 34 last birth- day)	\$ 1.30	\$.50	\$.65
2	Under \$125 (Employee's age 35 & over last birth- day)	1.95	.75	.975
3	125 - 146.99	2.60	1.00	1.30
4	150 - 174.99	3.25	1.25	1.625
5	175 - 199.99	4.55	1.75	2.275
6	200 - 224.99	5.20	2.00	2.60
7	225 - 249.99	5.85	2.25	2.925
8	250 - 274.99	7.15	2.75	3.575
9	275 - 299.99	8.45	3.25	4.225
10	300 - 324.99	9.75	3.75	4.875
11	325 - 374.99	11.70	4.50	5.85
12	375 - 424.99	14.30	5.50	7.15
13	425 - 474.99	16.90	6.50	8.45
14	475 - 524.99	19.50	7.50	9.75
15	525 - 574.99	22.10	8.50	11.05
16	575 - 624.99	24.70	9.50	12.35

(Increase by multiples of \$50) (Increase by Multiples
of \$2.60) (Increase by Multiples of 1.00 1.30)

**BRIEF SUMMARY OF OWIU-CIO PENSION PROPOSALS FOR LION OIL COMPANY
EMPLOYEES INDICATING THE ESTIMATED PENSION FOR SELECTED WAGE AND
LENGTH OF PARTICIPATION GROUP — ALSO INDICATING THE COMBINED S. S.*
AND COMPANY PENSIONS.**

(*based on H. R. 6000 now pending in Congress)

After Age 65 if You Retire With	Years Participa- tion in Lion Plan Since Sept. 1, 1943	Monthly Wage	Social Security Now	Lion Plan Now	Total Pension Now	H. R. 6000	OWIU- LION Proposals	Total Then
Primary Benefit only with	10 years	\$200	\$38	\$20	\$58	\$63	\$65	\$128
Wife 65 or over	10 years	200	58	20	78	94	65	159
Primary Benefit only with	20 years	200	38	40	78	63	65	128
Wife 65 or over	20 years	200	58	40	98	94	65	159
Primary Benefit only with /	30 years	200	38	60	98	63	78	141
Wife 65 or over	30 years	200	58	60	118	94	78	172
\$300 Per month Average Wage								
Primary Benefit only with	10 years	\$300	\$44	\$97.50	\$81.50	\$74	65	139
Wife 65 or over	10 years	300	66	37.50	103.50	110	65	175
Primary Benefit only with	20 years	300	44	75	119	74	97.50	171.50
Wife 65 or over	20 years	300	66	75	141	110	97.50	207.50
Primary Benefit only with	30 years	300	44	112.50	156.50	74	146.25	220.25
Wife 65 or over	30 years	300	66	112.50	178.50	110	146.25	256.25

OWIU-CIO PROPOSED SAVINGS PLAN FOR LION OIL EMPLOYEES

The Union proposes that an employees savings plan be established on the basis set forth below:

1. Through voluntary pay roll deduction authorization an employee may contribute up to 5% of his earnings into a Savings Plan trust established to administer the fund. The Company will contribute an amount equal to the employee's contribution which will be credited to the employee's account.
2. Employees may voluntarily suspend contributions at any time, but may not resume contributions until after six months, during which time the Company's contribution would also be suspended.
3. The Trustee may invest the savings in U. S. Government Bonds, company stock, or other securities approved for trust investment purposes. Earnings on investments will be credited to the employee's savings account.
4. An employee may, once each year, withdraw up to 2/3 of his and the Company's contributions to his savings account.
5. An employee may borrow money from the savings account under rules to be established by the trustees, using his savings account credit balance or collateral and repaying through pay roll deductions.
6. An employee's savings fund account is paid to him in full when he retires, or when he leaves the company prior to retirement. If an employee dies before retirement his savings fund account will be paid in full to his beneficiary.
7. Annual statements showing each member how much he has accumulated both in contributions and earnings will be furnished each member.

8. Trustees selected from and by members of the Savings Plan shall administer the Savings Plan under rules adopted for that purpose.

The above merely sets forth some basic principles for a Savings Plan and is not intended to be a complete proposal from the Union.

General Counsel's Exhibit No. 8.

Copy

OIL WORKERS INTERNATIONAL UNION
C. I. O.

INTERNATIONAL REPRESENTATIVE

El Dorado, Arkansas

June 23, 1952

REGISTERED MAIL
RETURN RECEIPT REQUESTED

Lion Oil Company
Lion Oil Building
El Dorado, Arkansas
Attention: Mr. Darrell Dickens

Gentlemen:

This letter is to serve as a written confirmation of our verbal offer to return to work all strikers at approximately 11:30 Saturday morning, June 21, during a collective bargaining conference in the Company's office at El Dorado, Arkansas. As we told you at that time this offer to return to work was unconditional and is a continuing offer.

It is my understanding the Company's position in this matter was that they would permit no one to return to work until a satisfactory new agreement has been reached.

The Company says it is mandatory that their proposals be included in the new agreement.

Yours very truly,

/s/ Robert F. Goss

Robert F. Goss, Representative

RFG:e

cc: Federal Mediation & Conciliation Service
Dallas, Texas

National Labor Relations Board
Fifteenth Region
New Orleans, Louisiana

Mr. Fred Schmidt, Director Dist. #3

Mr. Lindsey Walden, General Counsel
OWIU-CIO

General Counsel's Exhibit No. 9.

LION OIL COMPANY
El Dorado, Arkansas

June 23, 1952

Oil Workers International Union, C. I. O.
Trimble Building
El Dorado, Arkansas

Dear Sirs:

Since your Union called a strike on April 30, 1952, of persons then employed by Lion Oil Company at its Chemical Plant, representatives of your Union and representatives of our Company have attempted to reach an agreement in settlement of that strike, which will provide the conditions under which persons employed in the operating

and labor departments at the Plant will work for the Company during the term of the agreement reached. So far our negotiations have been unsuccessful.

In order that there might be no misunderstanding as to the last offer of the Company, made to your Union for settling the strike, made in our conference on last Saturday, June 21, 1952, we are writing this letter to state again that proposal. In order that each person represented by your Union in this matter may be informed as to the last offer of the Company hereinbefore mentioned, we are sending a copy of this letter to each of them.

The last offer of the Company, made on Saturday of last week, was as follows:

A contract would be entered into between the Company and your Union as representative of the persons mentioned in substantially the same form as the contract which was in effect between your Union and the Company at 11 p. m., April 30, 1952, amended as follows:

(1) The agreement would extend for the period beginning with the date of its execution and ending July 1, 1953.

(2) The agreement would provide that there shall be no strike, concerted work stoppage of any other character or lock-out prior to July 1, 1953.

June 23, 1952

Page 2

(3) As to increases in wages and other benefits, the Company offered two proposals, either of which your Union could accept.

PROPOSAL A

1. An increase in each basic hourly wage rate in effect on April 30, 1952, equal to 15¢ an hour.

2. An increase in the shift differentials in effect on

PROPOSAL B

1. An increase in each basic hourly wage rate in effect on April 30, 1952, equal to 13-1/2¢ an hour.

2. An increase in the shift differentials in effect on

April 30, 1952, to 6¢ for the evening shift and 12¢ for the midnight shift.

3. A change in the pay in lieu of notice clause with respect to a temporary lay-off and in the provisions with respect to termination pay (which suggested changes we understand are acceptable to your Union).

4. Adding Washington's Birthday as the seventh holiday with pay.

5. Continuation, during the term of the agreement, of the insurance and annuity programs which were in effect on April 30, 1952.

April 30, 1952, to 6¢ for the evening shift and 10¢ for the midnight shift.

3. A change in the pay in lieu of notice clause with respect to a temporary lay-off and in the provisions with respect to termination pay (which suggested changes we understand are acceptable to your Union).

4. Liberalizations in the group insurance plan and retirement plan in effect as of April 30, 1952, the details of which liberalizations have been explained to your Union on various occasions.

5. Upgrading 50% of the Jr. Operators to Operators and reducing the classification of the remaining 50% to Sr. Helpers with no reduction in the pay of each individual demoted to Sr. Helper so long as he works as a Sr. Helper as a result of that demotion. The upgrading of one Sr. Tester per shift in the laboratory to the classification of Chief Tester.

The basic hourly wage rates offered in each of the two proposals are as follows:

June 23, 1952

Page 3

	Proposal A	Proposal B
Senior Operator	\$2.29	\$2.275
Operator or Chief Tester	2.15	2.135
Jr. Operator or Sr. Tester	2.02	2.005
Sr. Helper (over 1 year in Bargaining Unit)	1.89	1.875
Senior Helper or Tester	1.81	1.795
Helper or Jr. Tester (first 45 days in Operating Department)	1.38	1.38
Nitrate & Sulphate Plant Laborer	1.60	1.585
Assigned Laborer or Head Janitor	1.53	1.515
Janitor, Maid or Yard Laborer (after 1 year in Bargaining Unit)	1.43	1.415
Janitor, Maid or Yard Laborer (after 6 mos. in Bargaining Unit)	1.40	1.385
Janitor, Maid or Yard Laborer (first 6 mos. in Bargaining Unit)	1.16	1.16

We understand that your Union objects strenuously to entering into an agreement which would terminate on July 1, 1953, and to the inclusion in the agreement of a provision that there shall be no strike or concerted work stoppage until that date.

We would like to make our position clear on these two points.

As we have explained on many occasions, the products of the Chemical Plant are sold principally on contract. Each such contract provides for the sale and delivery of those products over the fertilizer year which begins on July 1 of each year and ends on June 30 of the following year.

To meet the competition of our competitors who manufacture and sell the same products which we make at the Chemical Plant, we must be able to assure our customers that we shall be able to comply with our obligations to deliver materials sold under such contracts.

It is, therefore, important to all of us that we have continuous and full operation of the Chemical Plant during the fertilizer year.

June 23, 1952

Page 4

If the contract is to extend for the term ending July 1, 1953, and your Union does not intend to call a strike or other work stoppage at the Plant prior to that date, we can see no foundation for refusing to say so in the agreement by including in it a no-strike clause.

We understand that certain members of the Committee acting with your Union in these negotiations have argued that if the contract contains a no-strike clause, the Company will have the right, during the term of the agreement, to discharge any man and he will have no recourse if he is wrongfully discharged. That contention is wholly in error.

The contract will provide that if a man is wrongfully discharged, during the term of the agreement, the question of whether or not he was wrongfully discharged can be submitted to arbitration and that the Company will abide by the decision of the arbitrators.

Furthermore, it is not the Company's desire or intention to discharge any man who is properly performing duties assigned to him under the terms of the agreement.

Your Union has suggested that the men represented by it be permitted to return to work, in which event the provisions of the new agreement between the Company and the Union could be worked out at a later date.

We cannot agree to that suggestion. Heretofore each agreement which we have made with your Union has provided that it shall extend for a minimum of one year. While suggesting that the men be allowed to go back to work while further negotiations are had, your Union has not been willing to agree that they would continue to work thereafter for any period of time.

As you well know, the Chemical Plant has been operated principally by supervisory personnel since your strike began on April 30. Maintenance work is now being done by the machinists who have returned to work only this morning under a new contract. It is unreasonable to re-

quest that we disrupt those operations by permitting the men represented by you to go to work when we have no assurance whatsoever as to how long thereafter they will continue to work.

June 23, 1952

Page 5

Therefore, we cannot settle this dispute until such time as the men and women you represent are willing to agree to go to work and continue to work for a period of at least one year with no strike or other work stoppage during that period. In our judgment, that agreement is most beneficial to the men and women whom your Union represents for after all you are making a contract to work not a contract to strike.

It now must be evident to everyone that this strike, which has now been going on for 54 days, has not benefited either the employees involved in it or the Company. Efficient operations at full capacity will earn a profit justifying the payment of good wages to the men and women working at that Plant and will afford to them the continuation of the liberal benefits which they enjoy, including life insurance, health and accident insurance, hospitalization allowances for them and their dependents, sickness benefits allowances, and vacations and holidays with pay.

The Company is not only willing but anxious to make a settlement with your Union which would be reasonable, honest and fair to both sides, thereby relieving the hardship which each Lion Oil Company employee who is on strike is suffering and the loss which the Company is incurring.

Consequently, we offer to meet with the representatives of your Union at any reasonable time to discuss further the matters involved.

Yours very truly,

Lion Oil Company
By T. W. Martin,
President

General Counsel's Exhibit No. 10.

Copy

El Dorado, Arkansas

June 23, 1952

Mr. Billy Joe Davis, you may report to work for Lion Oil Company at its Chemical Plant at El Dorado, Arkansas in accordance with your rights under the Selective Service Act of 1948 as amended. You will report to work on the shift which begins at 8 AM on June 24, 1952, and will work on shift thereafter as directed.

Lion Oil Company

Chemical Division

/s/ A. M. Sprague

A. M. Sprague

Plant Superintendent

AMS:ew

Transcript of Testimony.

16

E. P. SHELTON, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * *

Q. Mr. Shelton, do you work for the Lion Oil Company? A. I do.

Q. In what capacity? A. Operator.

Q. Are you an officer or official of the Oil Workers International Union? A. I am a chairman of a five-man bargaining committee, and also secretary and treasurer of Local 434.

* * *

46

Q. (By Mr. Keenan) I will ask him this: Did the union object to the company's new proposal? A. We did.

Q. On what grounds? A. That we didn't want any contract to run up to a blank date, against a wall and end.

Q. What did you urge instead? A. We urged to keep the same kind of opening clause that we had always had, since the contract was first written in 1944.

Q. Did the other clause permit continued negotiations after

47

the notice period had passed? A. It did.

Q. Now, was the July 1st termination date objectionable to the union, or did they agree to accept it? A. We were not opposed to July being the anniversary date, if we count continue our contract like the old one, but we were opposed to running up against a blank wall entirely.

* * *

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Q. (By Mr. Keenan) Mr. Shelton, let me carry you back in your testimony a little bit. You mentioned earlier that the International Association of Machinists represented the maintenance employees of the plant. Did the Machinists honor your picket line when the company, when you put up your picket line? A. Our picket line was put up about 11:00 o'clock the night of the 30th of April. The IAM did honor our picket line.

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Q. Now, do you know what date their contract expired? A. To the best of my recollection, their contract expired on May 15th, 1952.

Q. What occurred on that date? A. On that date, at midnight, the members of that union also went on strike.

Q. Since that date, were there both the CIO and the IAM pickets and the IAM picket signs up? A. From that date until the CIO was enjoined from picketing, both unions maintained picket lines at the main gate, the back gate, and the railroad spur.

* * *

Q. Now, again so this may be in the record at this spot, how long did the IAM picket line remain up? A. To the best of my recollection, the IAM signed a contract on June 20th and removed their picket lines that afternoon.

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Q. Now, did you meet again on the following day, June 20th? A. We did.

* * *

Q. Now, was any proposal made with regard to dropping the union's contention as to the termination clause and trading off for anything else? A. There was.

Q. What was that proposition? A. Mr. Goss stated to Mr. Dickens that if the union would

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accept the company's proposition, the term of agreement, would the company be willing to drop their demands for a no-strike clause.

Q. What was the company's answer? A. Mr. Dickens' reply was no. He said that there were still two fundamentals in any contract we would sign, and had to have them both in it.

Q. Now, was the status of the contract, the old contract, whether it was in effect at this time or not, discussed at this meeting? A. Yes, sir, it was.

Q. How did it come up? A. Mr. Goss, I believe I recall it this way, Mr. Goss asked Mr. Dickens, did the company recognize the old contract as being in effect.

Q. And what happened? A. Mr. Dickens' reply was that they didn't.

Q. Now, if there was a question of whether the company was adhering to the provisions of the contract now in effect, was it discussed? That is, living up to it? A. Mr. Goss asked Mr. Dickens the question, was the company living up to the old contract, and Mr. Dickens replied, the old contract was breached and therefore wasn't in effect.

Q. Now, I believe you met again on June 21st, is that correct? A. Was that on a Saturday? Yes, we did meet on June 21st,

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Q. And carry on, what else did Mr. Goss say? A. At that time, Mr. Goss told him that since we couldn't reach an agreement, that the union was offering to return to work unconditionally.

Q. Did Mr. Dickens reply to that? A. The only reply he said, "Do you mean without anything?"

Q. He said what? A. He said, "No strings attached."

Q. Was there any mention at this time by Mr. Goss about reporting time? A. Yes, when we made the unconditional offer, he said, "I would like to know what shift you want the employees to start reporting."

Q. Now, what happened next? A. The next thing that happened, Mr. Dickens said, "I don't know, I will have to see about that." Then he asked for a recess.

Q. What length of recess did he ask for? A. I think at that time he asked for a ten or fifteen-minute recess, but during that short recess, he came back to the door of the conference room and said it would take longer than he thought, and he would like to recess until 2:00 or 2:30 that afternoon.

Q. Where were you meeting at this time?

71

A. In the Lion Oil Building, Room 605.

Q. After the recess, what next happened after the meeting reconvened? A. Well, shortly before the recess,

Mr. Goss asked Mr. Dickens did he have a walkie-talkie available where he could contact the powers-to-be. Just as we took up again, after this recess, Mr. Dickens made the statement that he was successful in getting the walkie-talkie in operation.

Q. Then, what else did he say? A. He said that the powers-to-be had conferred with them and they would not accept our offer to unconditionally return to work.

Q. Did he state at that time under what conditions, if any, it could put the employees back to work? A. He stated at that time that they would not put us back to work until we signed a contract containing a no-strike clause and a July 1st termination date, but he did propose they return us under the existing contract if we would amend it to include a no-strike clause and a July 1st termination date.

Q. Was any specific request for any specific grievance meeting made? A. Yes, there was.

Q. At this meeting? A. Yes.

Q. What was that? A. We requested a meeting on the grievances, and then the next Monday I wrote Mr. Martin, the president of the company, a letter requesting a grievance meeting.

Q. What specific grievance, if any, was mentioned in this proceeding, in this meeting? A. We wished to file a grievance on Article IV, Section 3 of the contract. That is the pay in lieu of notice clause.

Q. What was the grievance? A. We felt that the company had laid us off in violation of that clause which provided two weeks' notice that you are going to be laid off, or two weeks' pay in lieu thereof.

Q. What layoff are you talking about? A. When they locked us out on the 21st of June. When the powers-to-be refused our unconditional offer to return to work.

Q. Did Mr. Dickens reply to that? A. Mr. Dickens replied that they were not recognizing any grievances, not accepting any grievances. They didn't figure

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that the contract was in effect.

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Q. Now, was the question of whether the offer to return to work, was a continuing offer brought up? A. Yes, it was.

Q. Did Mr. Goss have anything to say on that? A. Mr. Goss told Mr. Dickens, "I want you to understand this unconditional offer to return to work is a continuing offer and I will confirm it by letter Monday." Which, if I recall right, he wrote him a letter by registered mail the following Monday.

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78

Q. Now, did Mr. Dickens, during the course of this meeting, have any counter-proposal to advance with regard to the offer to return to work? A. Yes, after one of the recesses, Mr. Dickens did state if we returned under the old contract, which we contend was the existing contract, we could return under it if we amended it to include the no-strike clause and termination date.

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Mr. Keenan: Mr. Davis, I wonder if we can stipulate that the documents that you just handed me is a copy of a letter dated June 23rd, 1952, addressed to the Oil Workers International Union, over the signature of Mr. Martin, and that letter was distributed generally to the employees on strike?

Mr. Davis: I would not stipulate that it was distributed generally to the employees on strike. I would rather state the proposition more accurately by saying, it was mailed to each of those employees on strike at their home address.

Mr. Keenan: I will accept the amendment and offer the document as General Counsel's Exhibit No. 9.

* * *

Mr. Keenan: I now offer as General Counsel's Exhibit No. 10, a document headed El Dorado, Arkansas, June 23, 1952, and purports to have been signed by Mr. A. M. Sprague, plant superintendent, and this particular document reads as follows: "Mr. Billy Joe Davis, you may report to work for Lion Oil Company at its chemical plant at El Dorado, Arkansas, in accordance with your rights under the Selective Service Act of 1948

82

as amended. You will report to work on the shift which begins at 8:00 a. m. on June 24, 1952, and will work on shifts thereafter as directed."

I understand that Mr. Davis will agree that each of the veterans who returned to work on or about this time signed a similar document with perhaps different dates and different reporting hours?

Mr. Davis: That was signed by Billy Joe Davis?

Mr. Keenan: Does that purport to be his signature. I notice it is signed by Mr. Sprague?

Mr. Davis: No, it isn't. I was mistaken. It isn't signed by him, but that was the conditions under which each one of the veterans who returned to work were given employment about that time under the Selective Service Act of 1948.

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88

Q. Now, was there any proposal made by the union on the no-strike clause at this meeting? A. Yes, sir, I believe that is the meeting that we made a proposal where we would eliminate Step 5 of the grievance procedure.

Q. In what connection would you eliminate Step 5 of the grievance procedure? A. After a grievance had occurred and gone through the first four steps of the grievance procedure, we would notify the company, the top of-

officials of the company, that a dispute existed, and that if the dispute wasn't settled within a 60-day period, the

89

no-strike clause would become inoperative.

Q. Now, in other words, there was a no-strike clause. You agreed to a no-strike clause and the Step 5, it would eliminate the fifth step of the grievance procedure? A. That is right, eliminate the fifth step of the grievance procedure and put in that provision, and we would agree to the no-strike clause.

Q. Was that acceptable to the company? A. No, Mr. Minert's reply to that, he said, "No, we can't accept that. We still will have actually a 60-day contract on any such type of a no-strike clause, and what we want is a year's contract."

* * *

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Q. (By Mr. Keenan) I will say, how long does it take under the most expeditious procedure, how long did it take for a grievance to be processed through the grievance procedure that had been tentatively agreed upon at the time you made the offer or Mr. Goss made the offer with regard to the no-strike clause we are discussing? A. It would take approximately, it has taken four to five months.

Q. That is what has been done. Reviewing the steps, what would

91

be the fastest they could go through? A. From 25 to 30 days.

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93

Q. Now, I believe the record shows that the order restraining the union from picketing was dissolved on July 2nd, is that correct? A. It was resolved on July 2nd, Wednesday, July 2nd.

Q. Did any picketing begin upon that resolution?

A. Well, it was fairly late in the afternoon of the 2nd when the judge rendered his decision, and shortly after rendering his decision, the picketing was resumed on the railroad spur track that afternoon at approximately 5:00 p. m.

Q. Was any picketing begun at the main gate at that time? A. There was no picketing at the main gate.

94

Q. Did you have a meeting on July 3rd? A. July 3rd, yes, we had a meeting.

Q. Do you recall whether the company had any proposal on the no-strike clause at that time? A. Yes, they did have a proposal on the no-strike clause.

Q. What was that proposal? A. To the best of my recollection, that is when Mr. Minert proposed—let me think just a minute. That, at any time a discharge arose under the contract and a man was discharged, and it had gone through the grievance procedure up to the fifth step, that man could ask for one of the top officials of the company to review his case and after ten rulings against the employee, discharge him, and the no-strike clause would become inoperative.

* * *

116

Q. Now, during the meetings of the 30th, 31st, and the meeting of August 3rd, did the union and the company come to an agreement? A. Yes.

Q. Did you execute a contract and a settlement agreement? A. We signed a contract and a settlement agreement at

117

approximately 7:30 p. m. on August 3rd in Mr. Davis' office.

Q. I believe the agreement provides for the return of the workers as of August 4th, and that the employees

19

Q. (By Mr. Keenan) Did General Counsel's Exhibit No. 4, the letter to the company, I note by the heading that it was also addressed to the Federal Conciliation Service, Federal Mediation and Conciliation Service, 14th and Constitution Avenue, NW, Washington 25, D. C.; was a copy of that letter also sent to the Conciliation Service?

A. It was.

Q. Was a copy, in addition to that being sent to the company, sent to any state agency? A. A copy was sent to the State Labor Commission.

Q. Here in Arkansas? A. Little Rock.

* * *

21

Q. Now, was there a decision made to take a strike vote in connection with the negotiations between the company and the union? A. It was.

Q. Do you know when that decision was made? A. I don't understand.

Q. Do you know when that decision to take a strike vote was made? A. To the best of my recollection, the best of my remembrance, it was made on February 11, 1952.

Q. Now, by whom was that decision made? A. By the membership.

Q. Now, I am not talking about the strike vote, but the decision to take the strike vote. A. The decision for the strike vote was at the request of the International President in Denver, Colorado.

Q. When was that request made to you? A. To the best of my knowledge, it was February 11th.

Q. Now, what items in the contract were at issue at the time this decision to take a strike vote was made?

A. There was a number of them: Wages, shift differentials, holiday pay, certain classifications, sickness benefits, clothing.

22

allowance; I believe that is it.

Q. How about pay in lieu of notice? A. Pay in lieu of notice, which is Article IV, Section 3 in the contract you offered as an exhibit, was in dispute at that time.

Q. What is pay in lieu of notice? Just briefly describe that? A. Pay in lieu of notice clause is, if a man is laid off, he is to be given two weeks' notice of the lay-off or two weeks' pay in lieu of the notice.

Q. Was the strike vote taken and when? A. The strike vote, to the best of my recollection, was taken on February 14th.

Q. What, if you recall the words, what were the words on the ballot? A. "Do you wish the International Union to call, conduct and conclude a strike?"

Q. Did that vote carry? A. That vote did carry.

Q. What was the percentage of the affirmative votes?

A. I believe it was 81.3 percent.

Q. About what percentage of the employees in the unit voted? A. I would say between 70 and 75 percent.

Q. Now, was there a date set for the strike or what might be called a deadline, and if so, when was the deadline first set and by whom?

23

A. The first strike deadline was set at 12:01, March 3rd.

Q. By whom and in what manner was the deadline set? A. It was set by the president of the Oil Workers International Union.

Q. Now, Mr. Shelton, did you as a member and chairman of that bargaining committee have a bargaining session with the company on February 29, 1952? A. We did.

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Q. Was there any other discussion of strike deadline? A. There was.

Q. What was that? A. We discussed with the company, if the strike occurred, that did they want us to shut down the plant in an orderly fashion, or was it their intention to shut it down. We wanted to work out an agreement if that was what they wanted.

26

Q. Was the strike postponed at any time? A. It was postponed.

Q. Was the postponement, was a notice given to the company at this meeting, this meeting of February 29th? To refresh your recollection, did you receive a telegram from Mr. Knight, the international president, postponing the strike one week at that time? A. We did.

Q. Was that telegram read to the meeting, or the notification of the one-week postponement given to the company at that meeting? A. I don't recall whether it was read at that meeting or not.

Q. You say there was a discussion of the strike, of shut-down procedure. What was the discussion? A. We asked the company if they wanted us to have the plant shut down in an orderly fashion by the strike deadline, or did they intend to run it as they had at the strike out there in the past.

Q. Who asked that, if you recall? A. To the best of my recollection, I believe Mr. Lawrence, the international representative, asked that question.

28

Q. Now, was there another meeting on March 6th? A. There was.

Q. What did Mr. Lawrence say to Mr. Sprague? A. He stated that the strike deadline was for the 10th, and that we wanted still to know if they wanted us to shut

the plant down, have it in a standby condition, or was it their intention

29

to operate the plant

* * *

Q. Did Mr. Sprague at that time or at a later time give the union any answer on the offer to shut the plant down?

A. Mr. Sprague stated that if we was going to strike, we would strike, and the supervisory personnel would operate the plant. Their intentions were not to shut it down.

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Q. At this time, Mr. Shelton, you mentioned certain other strikes. You mentioned two. Would you briefly tell us when those strikes were? What union was calling them, and their duration? A. Our union, the CIO, called the strike in 1950 on April 21st. The strike was an eight-day strike.

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31

Q. Now, during the course of that strike, was the company notified in advance of the strike? A. They were.

* * *

Q. Now, you mentioned an IAM strike. Does the IAM represent a portion of the employees in the plant?

A. They do.

Q. What portion? A. The maintenance employees.

32

Q. You mentioned a strike previously by them. When was that strike? A. I don't recall the exact date it started, but it started in early May of 1951.

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Q. And in other words, the union assisted the company in shutting down that portion of the plant that the company wanted to shut down? A. (That is right.

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Q. Was there a further postponement or further setting of the strike? A. It was.

Q. What was the new date? A. The new date, 12:01 a. m., April 30th.

Q. Did you go into bargaining session with the company on April 28th of this year? A. We did.

Q. Now, do you recall what occurred at that meeting? A. We had meetings April 28th, 29th, and 30th.

36

Q. Now, was there any proposal relative to a no-strike clause made at that meeting? A. The company representatives, if I recall right, Mr. Dickens—

Q. Was it Mr. Smith? A. One or the other, Dickens or Smith, stated that the company wanted a no-strike clause. As far as proposing one in writing, they did not.

Q. Now, at any time prior to that time during the course of these negotiations, had a no-strike clause been mentioned? A. No.

Q. Did Mr. Dickens or Mr. Smith, whoever it was who made that proposal, advance any reasons? A. Well, one of the reasons he advanced, it was due to the fact that he and Mr. Davis had made a trip some time in February to our General Counsel's office in Denver, Colorado, and since he advised them that under our contract we had the right to strike, and they said they wanted a no-strike clause.

39

Q. Now, on the 30th, I believe you said the union cut its demand to 22 cents, and that had been presented by Mr. Smith to the company. Was that offer accepted?

A. When we met on the morning of the 30th, Mr. Smith told us his people still thought those demands were unreasonable and could not agree to them.

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Q. Now, in the afternoon meeting before that last meeting, had there been any discussion of the no-strike clause? A. There had.

Q. What was that discussion? A. In that last offer, the company made, the pay in lieu of notice was still in issue in the dispute. The company's

41 \

proposal was that if we would agree to their pay in lieu of notice proposal, they would drop their proposal of a no-strike clause.

Q. That was rejected along with the rest of the proposals, is that correct? A. That is right.

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Q. Did the strike proceed as planned? A. The strike occurred at 11:00 p. m. on the night of the 30th.

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Q. What was the company's proposition as to the termination date? A. The company's reply in regard to the termination date, they proposed that their contract year for selling fertilizer ran from July 1st to July 1st, and that is the way they wanted the labor contracts to run.

* * *

Q. All right? A. He said he did. I asked him when, and he said, "Right now."

Q. All right? A. I said, "Has anybody coerced you or given you any promises or given you any idea that you are going to get any bonus?" He

229

said, "No." I then asked him if he was willing to work on the same basis that all the people were working in the plant at that time and he told me that he was.

Q. All right? A. I also asked him if he would continue to work if he started in. He told me that he would, that he had no objections to going and coming as the others were doing. With that assurance, we put him on on the 15th.

Q. Did you mention as you said a while ago in the early part of your testimony, that you got assurance from him that he would continue to work in spite of the picket line? A. Yes.

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235

Q. Did you conduct the same type of interview with each of the men that you allowed to come back, as you conducted with Mr. Anderson? A. I did.

Q. And from each you exacted an assurance that they intended to stay at work? A. That is true.

Q. Now, I believe you said in each instance you made no move to secure an employee until such time as that employee phoned in to you? A. That is right.

Q. No foreman had authority to allow a former striker to report to work until that striker had come to you, is that correct? A. We centralized all people asking for work in one person; and that was me, during the strike period.

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Q. Mr. Shelton wants to know, if he has called you about the same time Mr. Anderson called you, would you have let him in?

242

A. Mr. Counselor, knowing Mr. Shelton, I think I would have had a long discussion with him because I know that Pat would not cross the picket line. I would like to have it clearly understood that the operations of that plant are so critical that we did not want to disturb them unless we had assurance that the entire bargaining unit would come back under an agreement that would have a specific time limit, that they would work continuously throughout that time.

Q. In other words, you would not have let individual employees come in? A. I think I would have screened them pretty carefully, depending on the needs of the plant.

Q. If you were reasonably sure that they would observe the picket line, you would not have let them in, is that correct? A. They wouldn't have been any reason to because we needed men who would work continuously in order to maintain the operations of the plant.

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245

R. E. MINERT, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Keenan) You are R. E. Minert? A. Yes, sir.

Q. Mr. Minert, what is your position with Lion Oil Company?

246

A. Vice-President.

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256

Q. Now, at that meeting, you might want to refer to your minutes on this: Was there not a discussion as to a

settlement of the entire dispute including the unfair labor practice charges that had been filed by this time? A. Yes, sir, there was a discussion of all phases of the settlement at, I believe, the last two meetings that I had with the union at the hospital.

Q. Did you not at this meeting, at both of those meetings, place a condition upon the settlement of the controversy, the return to work and the signing of a contract, the withdrawal by the union of the unfair labor practice charges in this proceeding? A. I don't know if I placed it as a condition, but I did state that I thought that all matters should be settled if possible, so we could go back to work, and one of which I included, the charges of unfair labor practice that the union had made.

Q. Did you not state that the company would not enter into a settlement, that you would not settle, that would not settle all matters outstanding, including the unfair labor practice charges? A. I don't know if I stated we would not. I recollect that at the close of one of the meetings, after we had practically adjourned, one of the boys asked me some questions as to whether

257

I thought that was a requirement, and I recall replying that I thought we would expect that to be done.

Q. Was it not this was not this phrase used, "Mr. Young asked if the company still expected the union to withdraw that charge, and Mr. Minert said, 'It certainly does?'"

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262

Q. "Mr. Goss said that the union is guaranteed these other avenues, the cases before the courts and the NLRB and the company is trying to make us drop them, and he added that they constitute one of our disputes."

Do you recall Mr. Goss making that argument?

A. I think so.

Q. "Mr. Minert said that is what we are settling. Mr. Goss said that the union would not drop them," and you

replied that "We won't settle"? A. I don't recollect the last statement.

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290

H. D. DICKENS a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Keenan) Mr. Dickens, you are an attorney at law, associated with the firm of Davis and Allen, is that correct? A. Yes, sir.

Q. You are the Mr. Dickens mentioned in the testimony here as conducting some of the negotiations for the company; is that correct? A. Yes, sir.

Q. Now, Mr. Dickens, on June 21st, you heard considerable testimony as to a meeting that occurred on that date, I believe? A. Yes, sir.

Q. Now, do you recall that meeting? A. Yes, sir.

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310

Q. Now, did not at this time Mr. Goss repeat his offer of a

311

return to work? A. I think so, he repeated it several times.

Q. I call your attention to the last sentence of the first complete paragraph on page three of the minutes which is as follows:

"He repeated that the employees are offering to return to work, to work unconditionally, with no strings attached."

Is that what is in the minutes and is that your present recollection? A. That is my present recollection, that he made such a statement at that time.

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312

Q. I call your attention to the first complete paragraph after the recess in the minutes and I read you the following:

"At the conclusion of the recess Mr. Dickens stated that the company declined to consider any grievances until such time as we negotiate a contract."

Is that what is in the minutes? A. That is exactly what is in the minutes.

Q. Does your recollection vary from that? A. It does.

Q. In what time? A. To the extent that I said until we settled the strike. If there is any particular difference, that is my recollection, but I don't know.

Q. Maybe the next paragraph of the minutes, maybe you said both. The next paragraph reads:

"Mr. Goss asked if the company recognized the present grievance procedure and Mr. Dickens said not while the employees are on strike." A. That is the statement, and to my recollection it is correct.

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315

Q. Maybe this might refresh your recollection. About this time, didn't somebody ask you if you wanted these employees to

316

sign an individual agreement and did you not reply, "Well, a yellow dog contract wouldn't be any good"? A. I never made any such statement and nobody asked me that question. The facts of the matter, I asked Mr. Goss, I said, "You are not suggesting, are you, as a representative of the union, that we deal individually and contract individually with each employee?"

He said he was not. He did not mean that. But, I don't recall anybody mentioning a "yellow dog" contract or anything of that nature.

330

JOHN HENRY YOUNG, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Keenan) You are John Henry Young?

A. Yes, sir.

Q. You are a member of the Union's Bargaining Committee that handled the negotiations with Lion Oil Company? A. I am.

331

Q. Now, Mr. Young, you were a member of the Bargaining Committee that was bargaining in the June 21st conference, is that correct? A. I was.

Q. Now, when you went into that conference, did the union have any intention of doing anything unusual? A. Yes, sir.

Q. What had you intended to do? A. Offer to go back to work unconditionally.

332

Q. Now, was there any discussion of who would make the offer and the manner in which it would be made?

333

A. Yes, sir.

Q. What was that discussion? A. Mr. Goss said he would like to make the offer and we agreed that he should,

are now back at work in the plant, is that correct? A. The agreement returned the men to work on the 7:00 o'clock shift the morning of August 4th, that is correct.

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118

Q. (By Mr. Keenan) After the offer to return to work on June 21st, did you individually apply, either in person or by telephone, for reinstatement? A. Yes, I applied both ways.

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120

Q. Now, did you ever personally apply for work at the plant after the offer to return to work was made on June 21st? A. To the best of my recollection I made four personal

121

appearances at the main gate.

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127

Cross Examination.

Q. (By Mr. Davis) Mr. Shelton, the union which is the exclusive bargaining agent for the employees of the Lion Oil Company involved in this matter, is the Oil Workers International Union, CIO, is it not? A. That is right.

128

Q. For two or three years last past, you have been designated as a representative of the International Union to negotiate with Lion Oil Company with respect to matters concerning this bargaining unit, have you not? A. I have.

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130

Q. Mr. Shelton, when this strike was called, beginning on April 30, 1952, it was called by the Oil Workers International Union, CIO, was it not? A. It was.

Q. And it was called as a part of the nation-wide strike in the oil industry which was called by the Oil Workers International Union, CIO, and other unions? A. That is correct.

Q. In your direct examination you stated that at the last meeting between representatives of the union and the company,

131

just prior to the beginning of the strike here involved, which was April 30, 1952, the demands of the union were specific to many matters. Was an increase of 22 cents an hour in the hourly wage rate of each man involved and an increase of shift differentials to six cents an hour with the evening shift and 12 cents an hour for the graveyard shift and one additional holiday.

Now, that was the demand that the Oil Workers International Union, CIO, was making in its nation-wide strike, was it not? A. That demand was a program of the International Union that had been concurred in by the local union.

Q. You stated in your direct examination that on June 23, 1952, you went to the plant individually and reported to work. Now, you reported to work, I presume asking for your job that you had on April 30, 1952? A. I believe you are wrong on the date. I didn't report in person on June 23rd.

Q. What date was it? A. Well, on June 22nd I made numerous phone calls and again on the 23rd and one more the next day, the 24th. Then, between the 24th and the 30th, I made four personal appearances at the gate.

Q. And asked to be permitted to go on the job you had on April 30, 1952? A. I asked to go back to work since I was locked out on June

132

21st after the union had made its unconditional offer to return to work. They wouldn't let us return as a union and I was trying to return as an individual.

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142

Re-Direct Examination.

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147

Q. Mr. Shelton, right before the unconditional offer to work was made in the June 21st meeting, you and the committee called a recess, is that right? A. That is correct.

Q. Did you discuss what you were going to do? A. We did.

Q. What did you discuss?

* * *

A. Shortly after the morning of the meeting, we discussed the issues in dispute in general. The company had no new offer to make. So, prior going to the meeting, we had this unconditional offer in mind and if no progress was made, the company had nothing else to offer. So, I recall that before submitting this offer to Mr. Dickens, Mr. Goss asked for a two or three minute recess. Mr. Goss, in the committee recess, he walked down

148

the hall, we walked down there to talk our business and since Mr. Dickens was not the powers-to-be, we didn't know whether it would be advisable to make the unconditional offer to him or try and get him to get someone out there that had authority to say "yes" or "no". But, we decided to go back into the meeting.

As I testified earlier, Mr. Dickens, as soon as we got back in the meeting, he informed us that he was the powers-to-be. Mr. Goss informed him, "Well, that simplifies matters a whole lot then."

During the recess, I can recall that Mr. Goss instructed the committee, he said, "Now none of you don't make a break here and condition this thing on the old contract, the existing agreement or anything, because we are making an unconditional offer to return to work and we don't want any conditions or strings on it and they might contend if we mention the old contract, that it is a conditional offer and I am making an unconditional offer to return to work."

We concurred with Mr. Goss's offer.

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196

A. M. SPRAGUE, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Keenan) What is your full name? A.

A. M. Sprague.

Q. What is your position with Lion Oil Company, sir?

A. My title is the Plant Superintendent of the Chemical Division of Lion Oil Company.

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199

Q. Now, Mr. Sprague, since the men made an offer to return to work on June 21st, there has been evidence of numerous requests of various employees, some directed to you, seeking a method by which they could go back to work. Would you tell me what, if any, policy you set up to permit the return of individual strikers after June 21st?

A. We continued on the policy that we had since the beginning of the strike, as of April 30th, and that was that those people that requested to return to work, we would put them on as we needed them, as operations permitted. We, at the plant, did not consider it advisable to have our operations upset by men coming to work and then sud-

denly deciding not to return within possibly eight, 16 or 24 hours later. We had operated the plant as of the 21st and that is some 53 or 54 days since the strike started on April 30th, and we had started up equipment,

200

maintained it in operation with that personnel that was then working. We did not deem it advisable to start up additional equipment with a group that we did not know that would continue coming to work regularly. We had no definite assurance that the group that did apply for work through telephone or at the gate, or one way or another, would continue to come to work on their shifts.

* * *

Q. Well, now, I am talking about after June 21st, when these men made an offer to return to work collectively and individually. Are you aware of any statement made by them or their representatives, that they would not stay at work? A. I don't know. I don't know of any.

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201

Q. Certain employees were permitted to go to work after June 21st, is that not right? A. That is true.

Q. Now, what assurances were you given by these employees that they would stay at work? A. I was given an assurance by each employee, prior to the time he started working, that he would continue to come to work daily and continuously throughout the period of the remainder of the strike.

Q. Each employee who came to the picket line or who came to work at that period, gave you an assurance that he would stay at work? A. Yes, sir.

Q. Now, let me see: In what manner were those assurances given? Did you ask for it in written form or verbally? A. Verbally.

Q. You interviewed each of those men yourself, is that correct? A. I did.

Q. Why is that? Let me ask you this: Are you aware of the fact that during the period of two or three days after June 21st, that many men were trying to get ahold of you to ask you whether you would let them come back to work?

202

A. I was aware there were phone calls coming in to ask about coming back to work.

Q. Were you aware that people were asking to talk to you? A. I was.

Q. In that regard? A. I was.

Q. Had you given instructions to the guards and foremen generally that anyone who requested to return to work would be referred to you? A. I had.

Q. Now, when you received these numerous phone calls, why didn't you respond and talk to these men? A. I talked with some men. I didn't talk with all of them because I had work to do. I was at the plant 24 hours a day, practically.

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228

Q. You say he called you on the first and you didn't need him. I note from the record before me that he did finally go back to work on July 15th. How did it happen that you brought him back? A. Mr. Reedy called me on the 10th, at which time I told him that I didn't need him.

Q. All right. A. He called me also on the 14th.

Q. Yes? A. We didn't need him then. We did need him on the 15th. We asked him to come in for an interview.

Q. All right. On the 15th you say Mr. Reedy called you? A. Yes.

Q. Now, you asked him to come in for an interview?
A. That is right.

Q. Who did he interview? A. Me.

Q. What was the substance of this interview? A. He asked, Mr. Reedy, I asked him if he wanted to go to work.

the company would require the union to withdraw their NLRB charges before a settlement of the strike could be effectuated. At that time I believe Mr. Minert gave the impression that they would have some feelings about it, that they thought we should—the arbitration should settle the issues and we shouldn't try to go back—try and have good relations, shouldn't try and settle part of the issues in the dispute, and that point wasn't labored on too much at that time, but it was in a later meeting of the 16th.

Q. Do you recall Mr. Minert expressing any opinions or any inclination or desire with regard to the general NLRB charges at that meeting? A. Yes, sir, it was Mr. Minert's opinion in that meeting that the company would require us to withdraw those charges before we could arrive at any kind of a settlement to the dispute.

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385

Q. All right, now, do you recall a meeting of the employees here involved, a union meeting after that July 11th meeting? A. I do.

Q. What date was that meeting, or what day, if you can recall? A. I am not sure of the exact date. It was between the 11th and the 16th because we asked for the meeting of the 16th, because of the questions that arose at the union meeting.

Q. What questions arose at the union meeting? A. The employees asked me, while I was giving a report of the negotiations, if we could arrive at a settlement and still proceed with the Board case, the NLRB case we had on file, and I told the employees in the union meeting that the company had indicated in the meeting on the 11th, as most companies do, that they would desire to have those withdrawn before we could settle the dispute, but it was my opinion they would not demand it because I felt it was an illegal demand.

Some of the employees then asked me what I thought the company would do, and I said I didn't know until I went and asked them on that point.

Q. In the meeting of the 16th, did you bring up the subject, and, if so, how? A. Yes, the union asked for the meeting of the 16th for the express purpose of determining if the company considered it a

386

mandatory item.

Q. You said, "expressed." Did you express that purpose to the company in your request for a meeting? A. Not in the request for the meeting, no, but following, after the meeting had convened and we were started, the discussion in the beginning of the meeting was between Mr. Minert and myself, because here again I asked the committee to let me handle this discussion until I found out just where we were on the question of the Labor Board charges, and Mr. Minert, in our discussion, he made it quite clear to me that the company would not settle the labor dispute unless the union agreed to withdraw the Board charges.

Then, following that, we had some discussion that, I believe, some of the other committees indulged in at some point along there, I asked Mr. Minert specifically if they would require us, if the withdrawal of the NLRB charges was a mandatory feature of a settlement, and he said that it was, and I told him that the union would not withdraw the NLRB charges, and whereupon he said, "Then, we can't get together. We can't make a settlement."

387

Q. Did Mr. Minert recede from his position at that meeting? A. He did not.

Q. Are you aware of any recession from that position until July 30th, when I believe there has already been testimony that Mr. Davis, July 30th when Mr. Davis did withdraw that demand as a point of the settlement? A.

My last meeting was on the 16th, and at the close of that meeting there had been no recession from that position.

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421

J. B. ROGERSON, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * *

Q. What is your employment at this time? A. I am employed by the Lion Oil Company, as Manager of Manufacturing.

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424

Q. Under normal conditions, Mr. Rogerson, is that plant operated continuously? A. It is operated 24 hours a day, 365 days per year.

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431

Q. Is there any danger in shutting down those reform units and in starting the reform units with respect to keeping the operation in balance? In other words; your mixture is out of kilter, would there be danger in it? A. Yes, sir, if you did not have the proper steam-gas ratio in the tubes, the catalysts in the tubes would be destroyed and that in turn would destroy the tubes. We had that happen about a year ago. One of the operators made a mistake and cut the steam out and destroyed the reform tubes and the catalyst, and it cost about one hundred sixty-five or a hundred and seventy thousand dollars to repair it.

* * *

and he went further in the discussion, that he would make the offer, that none of us, or he, none of us would refer in any way to the old contract, to put a condition into it. It was an unconditional offer to return to work.

* * *

Q. What was the first thing after you went back into the meeting? A. Well, to the best of my memory, that is when Mr. Dickens made the statement he was the powers to be. Mr. Goss said, "Well, I am glad to know that because that simplifies matters." Or "That makes it better." I believe that is the statement he

334

used.

Q. And did Mr. Goss continue? A. Yes, he told Mr. Dickens that we were offering all strikers back to work unconditionally, and asked him what schedule or system would he desire us to return to work on.

Q. Did Mr. Dickens reply to that? A. Not directly. With a look of amazement on his face, he said, "Do you mean unconditionally?" Mr. Goss said, "Unconditionally, no strings attached."

At that time I believe Mr. Dickens asked for a recess.

Q. How long a recess? A. I believe he asked for 20 minutes and approximately, well he might have used the 20 minutes, but some time shortly after, he came back and stuck his head in the door and asked us to recess until 2:30 that afternoon.

Q. Now, to the best of your recollection, you have told us what Mr. Goss said, is that correct? A. -That is right.

Q. Do you recall Mr. Goss in any way mentioning the old contract when he made that offer at that time? A. No, sir, he did not mention it at that time.

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335

Q. Now, Mr. Young, at that meeting, I imagine it was reasonably long. I am going to take you close to the

end of the meeting, and ask you if near the end of the meeting Mr. Dickens made another proposal to the union relative to the return to work?

336

A. At that time, he offered for us to go back under the old agreement, if we would amend it to contain a no-strike clause and a term of agreement as they desired.

Q. Do you remember when he made that offer, did Mr. Goss say anything to him as to what agreement was meant? A. Yes, Mr. Dickens referred the contract as being the old agreement, I believe, and Mr. Goss said, "Do you mean the contract that is now in effect?" And there was a contract laying on the desk, and Mr. Dickens said, "I mean this yellow book here."

Q. Now, Mr. Young, I am going to ask you to think very carefully and tell me who mentioned the old contract first in connection with this return-to-work offer, Mr. Goss or Mr. Dickens? A. To the best of my memory, Mr. Dickens.

351

Q. Let me ask you this: At any time, at any of these sessions you have had, relative to going back to work, did anybody from the company intimate that they wanted you to go back under less favorable conditions than you came out on? A. No, they didn't.

355

Q. Now, let me ask you this: If, the night before or shortly before the July 16th meeting, had there been a union meeting? A. There had.

Q. In the union meeting, had anyone raised the problem we are talking about now, the withdrawal of the NLRB charges before a contract was signed? A. To the best that I remember, we reported the progress of the negotiations, reported that the company had insinuated we

would have to withdraw the charges and our membership demanded that we get a direct answer or request that we get a direct answer as to whether we would have to withdraw those charges or not. It was our opinion, and we told the membership that the company would not take that stand.

Q. For what reason? A. In the first place, we felt it was a violation of the law.

Q. Now, at this 16th meeting, did anyone initiate a discussion of this problem, specifically, did Mr. Goss do it? A. Yes, sir, Mr. Goss handled that phase of it. The negotiations

356

were opened in the usual manner and we got around to the two big problems, the no-strike clause and the term of agreement, I believe, in this meeting, but anyway, the purpose of the meeting was to get the company to take a stand one way or the other on this. So, Mr. Goss asked Mr. Minert a direct question, if it was the company's stand or the company's contention that the union would have to withdraw their charges with the National Labor Relations Board before they would make an agreement with these employees, and he said that it was.

Mr. Goss stated that the union would not withdraw the charges.

Q. What did Mr. Minert reply to that? A. Mr. Minert said, "We can't make an agreement, then."

358

C. W. WHITWORTH, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. You are an employee of the Lion Oil Company?
A. I am.

Q. You have been on the Bargaining Committee that bargained with the company in this current controversy, is that right? A. I have, with the exception of July 21st.

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363

Q. Do you remember towards the end of this meeting, any discussion between Mr. Young and Mr. Minert? A. I do.

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364

Q. To the best of your recollection, what did John Henry say, and what did Mr. Minert say, in as much detail as you can give it to us? A. I believe John Henry asked Mr. Minert, should we get together on the contract, contractual issues of this, and would that be one of the conditions of the settlement, dropping the National Labor Relations Board charges, and Mr. Minert at that point said that he felt that when and if we signed a contract, we shouldn't have any strings left hanging anywhere at all; we should close the whole thing up, start out with a clean slate and go back to work.

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365

Q. Some time after that meeting of July 11th, did you have a union meeting? A. Well, I believe after that meeting there was on a Sunday following that meeting, we did have a union meeting here in this Court House, the courtroom here.

Q. Was there a question of the withdrawal of the NLRB charges discussed? A. It was discussed at length in the meeting with the membership here.

Q. Was there action taken? A. Well, the membership directed us, or asked us to go back and find out if that was one of the conditions of settlement, to drop the lock out charges.

Q. Did you have a meeting with Mr. Minert on the 16th of July, again in his room? A. We did.

Q. In the hospital? A. We did.

366

Q. All right, now specifically with regard to this issue, do you recall a discussion with Mr. Minert led by Mr. Goss? A. It was brought up. There was a discussion of the contract and it got into the contract settlement and what conditions it would take to wrap up the whole contract. Mr. Goss asked if that was one of the conditions of the settlement.

Q. How did Mr. Goss bring the subject up, if you recall? A. It was led up to, as well as I remember, by the fact we was just finding out the conditions of settlement, what it would take to wrap up the contract or settle the contract.

Q. Did Mr. Goss mention the discussion at the union meeting? A. He did; he told Mr. Minert that the people wouldn't sign a contract, didn't want to sign a contract and have to drop their NLRB charges.

Q. All right, now; what happened thereafter in the discussion between Mr. Goss and Mr. Minert? A. Mr. Minert made the statement at that point that there wouldn't be a contract unless we did drop the NLRB charges.

Q. There would or would not? A. Would not be a contract unless we dropped the NLRB charges.

370

ROBERT F. GOSS, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Keenan) You are Mr. Robert F. Goss?

A. Yes, sir.

Q. You are the International Representative of the Oil Workers' International Union, is that correct? A. That is correct.

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Q. Now, Mr. Goss, you were at the meeting of June 21st? A. I was.

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372

Q. During the recess, what discussion was pursued between you and the committee?

373

A. I would like to explain one factor, that generally in our bargaining sessions no one person conducts all of the discussions for the union. It is very common that everybody on our committee has a right to come into the discussion at any time. I asked the committee to please refrain from entering the discussion on the offer to return to work until I had made it clear that the offer to return to work was completely unconditional, and upon the assurance of the committee that I could do that, we then went back into the bargaining session.

Q. Do you remember any other discussion? Did you advance any reasons at that time as to why you wanted to make that so plain? A. On that point, Mr. Counsel, there had been quite a bit of discussion between members of the committee and myself about some of the previous offers where they said they unconditionally offered to return to work under the terms of the agreement, and it was my own amateur opinion that if you made an unconditional offer to return to work, you could not condition it in any manner, and I cautioned all of them in the discussion not to mention the old contract because I wanted the offer to be solely unconditional.

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374

Q. What happened after the recess? A. The first statement was made, Mr. Dickens replied, "I am the powers that be."

Q. Then, what did you say? A. Whereupon I told Mr. Dickens that I was very happy to know that because it would simplify my problem. It was that I was offering to return all the strikers unconditionally, and wanted to know what schedule they should report on with no strings attached.

Q. At that time, let me ask you this: When you say "unconditional," did you attach at that time the phrase "unconditionally under the old contract" to your testimony? A. I did not.

375

Q. Now, what happened after you went back into the meeting? A. Mr. Dickens, I am sure in jest, said he was successful in getting the walkie-talkie in operation and that he was authorized to tell us that he could not permit the employees to return to work until a new agreement had been reached that would include a no-strike clause and the company's desired term of agreement.

Q. What discussion, if any, ensued after that? A. I believe it was at that point that I asked Mr. Dickens if he didn't consider the old contract still in effect, and Mr. Dickens, I believe, replied that he couldn't answer that because he felt that was involved in a legal snarl.

376

Q. Any question of a lockout brought up by them? A. It was at that point then that I asked Mr. Dickens if he was locking out the employees, and I believe Mr. Dickens at that point stated that he didn't think so. In fact, I think he was pretty firm that it wasn't the company's opinion they were locking us out; that if the employees wanted to return under the old contract, modified with a no-strike clause, something might be worked out.

I believe that was in jest, because he smiled. I don't think it was a counterproposal as was normally made.

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377

Q. In order to shorten your testimony, sir, and to bring out the matters about which there appears to be some controversy, what was the company's response as to your request to discuss grievances and in particular this grievance on pay in lieu of notice? A. The company made it quite clear that they didn't feel we had the right to discuss these grievances. The contract wasn't in effect.

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380

Q. Right near the end of the meeting was there another discussion of the offer to return to work in which the old contract came into it? A. There was.

Q. What was that discussion? A. That was the time that Mr. Dickens said that the employees could return to work under the old contract if it had a no-strike and a July 1st termination date, and I asked him if he didn't mean the agreement in effect, and he pointed at the yellow book on the table and said, "Under those articles as amended." I believe that is what he stated.

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383

Q. (By Mr. Keenan) Mr. Goss, you remember the first meeting with Mr. Minert in the hospital on July 11th? A. I do.

384

Q. Do you remember the discussion between Mr. Young and Mr. Minert, at which the matter of the charges in this case were brought up? A. I remember some discussion at that time.

Q. Will you tell us what you remember of those discussions? A. Well, the question came up as to whether

455

Q. And, when you received information at 6:00 o'clock on April 30, 1952, that the employees involved in this matter were going on strike at 11:00 o'clock that evening, did you assemble your supervisory personnel in preparation for operating the anhydrous ammonia section?

A. Yes, we did. We put the whole supervisory force on immediate standby, so they would be available if at 11:00 o'clock a strike actually occurred. We had in mind for three purposes, we would keep the ammonia plant itself going in order to manufacture some ammonium nitrate we had under contract, to ship to farmers and other people, and that we also didn't have any way to know how long the strike would last, whether it would be one day or 30 days, and if it was only going to be one day it would be ten days to shut it down and start up again, and we had no ammonia particularly in inventory.

You would not be able to call back all of the employees at one time because the basic product in that plant is ammonia. So, to me, it was to the advantage of the company, to the public, and to the employees, that we keep the ammonia section in operation during the strike.

456

Q. In making that recommendation, did you give any consideration to the possible damage that might occur to the ammonia section by shutting it down? A. Yes, sir, we realized for the past several years we had never been able to shut down a reform furnace without damage to the tubes. If we did shut down the reform furnaces and damaged the tubes, we would be down several days or weeks before we could have ammonia even to operate, and besides there would be several more days before we could have ammonia we could give to the nitric acid plant and the sulphate plant and the ammonium nitrate solutions plant. Also, we considered the damage and the chances of ruining the converters in the ammonia section if we had to shut them down.

Those two things were the main hazards in having to close down the ammonia plant. So, on that basis, we

figured that the best thing for everybody concerned would be to try to keep the ammonia plant on stream.

Q. Did you take into consideration any element of the economic loss of the company which would be entailed in shutting the plant down as a whole? A. Yes, sir, I took into consideration that it would be to the interest of the company that we keep the ammonia section operating.

Q. Of course, the strike began on April 30, 1952. Will you state whether the month of May and the month of June are months

457

in which there is a great demand for anhydrous ammonia for fertilizer? A. Yes, sir, May and June are the growing season for crops in this country, and during that time is the time that you need ammonium nitrate, you need ammonia and need ammonium sulphate, and that is when our contracts, people that have contracted for fertilizer particularly, want delivery.

Q. And it was your desire to meet your obligations under as many of those contracts as you could? A. As far as possible.

Q. Now, when the employees here, involved went on strike at the plant at 11:00 p. m. on April 30th, what did you do with respect to further continuing the operation of the plant or some portions of it? A. We immediately began to close down the portions of the plant we knew we did not have sufficient supervisory foremen to operate efficiently and safely, and those boys went on standby for shift relief for the boys operating the ammonia section. We continued to operate 75 percent of the ammonia plant. We closed down one reformer which is approximately 25 percent of the ammonia section that was closed down.

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Q. Mr. Rogerson, what in your opinion is the replacement value of that plant? A. About \$55,000,000.

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Cross Examination.

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Q. You had ample notice that the strike was coming on? A. To take care of the physical properties in the plant, yes, sir.

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Q. Now, you spoke a moment ago and I would like to go into this a little bit with you. I believe your testimony was in every respect, when you talked about the shutting down of a particular operation, that it could cause considerable damage if not done properly and almost always did. I believe that was your testimony about several of these operations, for instance, reform. I believe I wrote this down, "It is almost impossible to shut down a plant without damage."

Is that right? A. The gas reform section?

Q. Yes. A. Yes, that is correct. I am thinking particularly about the tubes, which are 25-20 stainless steel. That is a high nickel content tube and they are welded and operating at 1800 degrees fahrenheit.

At night, it is almost a white heat. Those tubes stay at that temperature 24 hours a day, 365 days a year and they are all right, but when you cool one down to room temperature, atmospheric temperatures, it almost always will break or crack in the welds.

Now, the reason we have that kind of tube is because during the war, World War II, that was the only kind of tube we could buy. Today, if you are buying new tubes, you get a

507

seamless tube but the units out there are equipped with that kind of equipment and it has to be operated very

carefully if you are to operate without breaking those tubes. I mean shutting it down.

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A. M. SPRAGUE, a witness called by and on behalf of the Respondent, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination.

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Q. In your previous testimony, you have stated what was done when the strike began with respect to shutting down some of the facilities and continuing the operation of the facilities for manufacturing anhydrous ammonia. I would like, however, for you to give us this information with respect to the time you commenced other operations.

When did you begin the production of ammonium nitrate solution, after the strike began? A. The ammonium nitrate solutions plant was started—May I refer to my notes? I have those dates set so I can give them accurately.

Q. You may look at your diary or whatever you kept about it. A. The solutions plant was started on May 22, 1952.

Q. How long was it operated then? A. It was operated intermittently until July 18th.

Q. When did you resume the production of sulphuric acid? A. The sulphuric acid plant was started on June 25, 1952.

519

Q. Did you subsequently begin the manufacture of sulphate ammonia? A. Yes, sir.

Q. At what time? A. That was on the 28th of June, 1952.

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Cross Examination.

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* * *
Q. Now, has anyone ever from the union ever threatened to walk off the job without notice? A. To my knowledge they haven't said that to me.

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563

J. L. DOUGHTERY, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Davis) What is your name? A. J. L. Dougherty.

Q. What is your employment, Mr. Dougherty? A. I am coordinator of the labor relations of the Lion Oil Company.

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566

Cross Examination.

Q. (By Mr. Keenan) Mr. Dougherty, you are a shorthand reporter? A. I took shorthand, yes, sir.

Q. Had it been your practice to take notes in these meetings? A. Yes, sir.

Q. That you attended? A. Yes, sir.

Q. Did you take notes in shorthand, your notes, did you take them in shorthand? A. Yes, sir.

Q. Did you later transcribe those notes? A. I didn't transcribe them myself. I dictated those notes to my secretary and at the time transposed the thing into a narrative.

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568

Q. I am speaking about the one that begins after the recess. It is on page two of the June 21st minutes?

A. Yes, sir.

Q. Does that purport to reflect in narrative form what Mr. Goss said at that time? A. Yes, sir.

Q. And it reads, if you will follow me, "After the recess Mr. Goss stated that the union offered an unconditional return of all the strikers and asked Mr. Dickens when the company wanted the employees to return to work."

Then it says, "He said, 'We are ready and available.' Mr. Dickens stated that that is an operational problem and he couldn't say when they could return. Mr. Goss added, 'The union is not asking an increase in wages or anything else.'"

569

Does that, to your recollection and from what you see here before you, reflect what Mr. Goss said at that time and what Mr. Dickens replied to him? A. Yes, sir, that was the first statement of the offer.

Q. Now, would you then point to me from the minutes or from your recollection, wherein the meeting Mr. Goss qualified his offer in any way? A. It was later on in that meeting, on the third page of those minutes we gave you, the bottom paragraph.

"Mr. Goss said the employees are offering individually to return to work under the terms of the existing contract now in effect. Mr. Dickens stated he wanted them to return to work but we must have an agreement. Mr. Goss elaborated that the employees are offering to return to work and continue to bargain on a new contract."

Q. So, you find, according to your recollection, Mr. Goss brought that matter up later in the meeting, after having once made the offer as you first found it, is that correct? A. Yes, sir.

Q. Now, back to page two and the part I read to you, I don't find any reference to the old contract in that paragraph and I believe your statement is that Mr. Goss didn't make any reference, to your recollection, at that time? A. Well, at this time I don't recall that he did.

* * *

628

**Proposed Findings of Fact, Proposed Conclusions of Law,
and Proposed Order.**

Statement of the Case

Upon charges duly filed by Oil Workers International Union, C. I. O. herein called the Union, the General Counsel, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana) of the National Labor Relations Board, herein called the Board, issued his complaint dated August 11, 1952, against Lion Oil Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (3), (4), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act. Copies of the charges and complaint, and notice of hearing were duly served upon the parties.

With respect to the unfair labor practices, the complaint alleged in substance (1) that the Respondent on or about June 21, 1952, and until about August 4, 1952, refused to reinstate striking employees entitled to reinstatement, (2) that from July 16, 1952, until July 30, 1952, the Respondent imposed as an additional condition to the reinstatement of the striking employees the withdrawal of the charges filed by the Union in this proceeding, (3) and that after June 21, 1952, the Respondent refused to

bargain collectively with the Union as the duly authorized representative of its employees. The Respondent duly filed its answer denying the commission of any unfair labor practices.

Pursuant to notice, a hearing was held on August 26, 27, 28, and 29, 1952, at El Dorado, Arkansas, before the late Trial Examiner Henry J. Kent. The General Counsel and the Respondent were represented by counsel and the Union by representatives. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, to argue orally, and to file briefs. Briefs from the Respondent and the General Counsel have been received.

Because of the death of Trial Examiner Henry J. Kent, the Chief Trial Examiner on January 16, 1953, designated another Trial Examiner to perform the duties and exercise the powers of Trial Examiner in the place of Trial Examiner Kent. On January 30, 1953, the Board, however, acting pursuant to Section 102.36 of the National Labor Relations Board Rules and Regulations, Series 6, as amended, issued an order that the case be transferred and continued before the Board, that the order designating another Trial Examiner be revoked, that no Trial Examiner's Intermediate Report be issued, and that Proposed Findings of Fact, Proposed Conclusions of Law, and a Proposed Order be issued. Pursuant to said Rules and Regulations, any party may, within 20 days from the date of these Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, file exceptions, together with a supporting brief. Should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board simultaneously with the statement of any exceptions filed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial

error was committed. The rulings are hereby affirmed. Under date of September 18, 1952, the Respondent and

630

General Counsel submitted a stipulation on corrections to that part of the Official Report of Proceedings dealing with material sections of the contract between the Union and the Respondent which was executed on August 3, 1952. This stipulation has been accepted, and the corrections have been made part of the official record in the case.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. The business of the Respondent

Lion Oil Company, a Delaware corporation, has its principal office and place of business in El Dorado, Arkansas, near which it operates its chemical plant. The Respondent is engaged in the refining and distribution of petroleum and petroleum products and in the manufacture and sale of chemical products.

During the calendar year of 1951 the Respondent received raw materials from outside the State of Arkansas valued in excess of \$1,000,000. During a similar period the Respondent sold, shipped, and delivered finished products to states other than the State of Arkansas valued in excess of \$1,000,000.

We find that the Respondent is engaged in commerce within the meaning of the Act.

II. The labor organization involved

Oil Workers International Union, C. I. O., is a labor organization admitting to membership employees of the Respondent.

III. The unfair labor practices

A. BACKGROUND AND SUMMARY OF EVENTS

On March 23, 1944, the Union was certified as bargaining representative of Respondent's production employees. In June 1947 employees in the labor department were included in the bargaining unit represented by the Union.

631

The issues in this case give particular significance to the past relations between the Respondent and the Union. On March 2, 1949, the Union during contract negotiations stated that, if agreement was not reached, the men were going to strike. The parties discussed an orderly shutdown, but no date of the prospective strike was mentioned. However, as the meeting continued with negotiations on the contract, the Respondent instituted a gradual shutdown. The plant was then shut down at the Respondent's request in an orderly manner by the Union members who, however, did not consider themselves on strike and who reported for work. The shutdown lasted for 10 days, during which time new facilities were tied in to the rest of the plant.

On April 21, 1950, the Union did strike over contractual terms. That strike lasted for 8 days. The Union notified the Respondent in advance and offered to have its members shut the plant down, but the Respondent declined the offer and kept the plant in partial operation. The International Association of Machinists, which represents the maintenance employees, went out on a strike which lasted for 35 days in May 1951. The picket line was set up after the day shift had gone to work; but, although the Union recognized the I. A. M. picket line, the day shift employees remained inside and, working a double shift, shut down that portion of the plant which the Respondent did not operate during the strike.

● Since August 12, 1946, the date of the first contract between the Respondent and the Union, and prior to April 30, 1952, the date of the strike involved in this proceeding, the parties had executed 5 additional contracts. On August 24, 1951, the Union notified the Respondent and the Federal Mediation

632

and Conciliation Service of its desire to amend the contract and of the existence of a labor dispute, and sent a copy of its letter to the State Labor Commissioner for the State of Arkansas. Negotiations on modifications of the contract began on August 29, 1951. On February 14, 1952, the employees voted to strike and notified the Respondent. The strike, after several postponements, occurred on April 30, 1952. The Respondent petitioned for an injunction in the Union County Chancery Court on May 1, 1952; on June 4, 1952, a temporary restraining order was issued, and picketing stopped. On July 2, 1952, the Chancery Court dismissed the petition of the Respondent and the cross-petition of the Union, which alleged that the Respondent had locked out the employees, and on July 3, 1952, the picketing was resumed. On June 21, 1952, the employees offered to return to work and the Respondent refused to reinstate them. Negotiations on a new contract which had been conducted since August 29, 1951, were culminated by the execution of a new contract and a strike settlement on August 3, 1952. The striking employees began to return to work on August 4, 1952, and by August 15, 1952, all employees involved except 4 had returned.

B. DISCRIMINATORY REFUSAL TO REINSTATE

1. The Facts

The last contract prior to the one executed on August 3, 1952, at the time the strike was settled, contained the following provisions with respect to the duration of the agreement:

"Article I

"This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

"This agreement may be canceled and terminated by the Company or the Union as of a date subsequent

to October 23, 1951, by compliance with the following procedure:

"(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following

633

the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

"(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

On August 24, 1951, in accordance with Section 8 (d) of the Labor Management Relations Act, the Union notified the Respondent, Federal Mediation & Conciliation Service, and the State Labor Commissioner for the State of Arkansas that it desired to modify the contract and that a lab. dispute existed. The parties met and negotiations began on August 29, 1951. At no time did either the Respondent or the Union notify the other that it was terminating the contract. Throughout the negotiations, which continued after the strike, the Respondent's position was that the strike had breached and thus terminated the contract. In its answer, however, the Respondent states that the contract was still in effect for the entire period beginning June 21, 1952, and ending August 3, 1952.

At the request of the International organization the employees voted on February 14, 1952, to strike. The strike

was first set for March 3, 1952. On February 29, 1952, the Union at a meeting informed the Respondent of the impending strike and discussed with the Respondent whether the latter wanted the Union's members to shut down the plant in an orderly manner or whether the Respondent would arrange to do it otherwise.

On March 6, 1952, the parties met again, and the Union informed the Respondent that the strike had been postponed until March 10, 1952, and that the Union still wanted to know if the Respondent wished the Union members to shut down the plant. The Respondent stated, that, if the men were going on strike, the supervisory personnel would operate the plant. In view of pending Wage Stabilization Board proceedings, the strike was further postponed to

634

12:01 a. m., April 30, 1952. During this time there were several meetings between the Respondent and the Union, and at a meeting on April 29, 1952, the Union stated that it was still willing to shut down the plant in an orderly manner. At a Union membership meeting on April 29, 1952, the Union acceded to the Respondent's request for another postponement. On April 30, 1952, the Union membership rejected the Respondent's last contract offer and voted to strike at 11:00 p. m. that day; the Respondent was so notified, and the strike began at 11:00 April 30, 1952. Approximately 613 men went on strike, and the Respondent shut down part of its plant and continued to operate part of it with its supervisory, clerical, and technical personnel.

On June 4 and 5, 1952, E. P. Shelton, officer of the Local and chairman of the Local Bargaining Committee, appeared at the plant gate with three groups of strikers and stated that they had reported to go to work. When Shelton in response to a question from Sprague, plant superintendent, stated that the men would report for work when there was no picket line, Sprague stated that he could not permit them to return under such conditions. The International Association of Machinists, which had been on strike since the expiration of its contract on May 15, 1952, and which

maintained a picket line until June 20, 1952, when it signed a contract with the Respondent, temporarily withdrew its pickets on each of these occasions but immediately resumed picketing when the groups departed. On May 31, 1952, the picket lines of the Union and the I. A. M. had similarly withdrawn to permit a group of approximately 125 men to approach the plant gate without crossing a picket line. After Sprague, plant superintendent, had interviewed approximately 28 of the men and told them that under the operation of the plant at that time he could not put them back to work without advance notice, the group left.

During the strike, negotiations for a new contract (set forth more fully in the section of these findings dealing with the refusal to bargain) continued. At the meeting on June 20, 1952, the Union was assured by the Respondent that none of the strikers had been replaced. On June 21, 1952,

635

the Union Committee headed by Robert F. Goss, International Representative, met with the Respondent's representatives headed by H. D. Dickens, attorney for the Respondent. Prior to the meeting, according to Goss' testimony, the Union had decided to offer to return to work if there was no way to agree on a contract without acceding to the Respondent's demand for a no-strike clause. Upon being informed by Dickens that the no-strike clause was a "must" item, Goss asked if the "powers-that-be," meaning the Board of Directors of the Respondent, were available. Dickens replied that some of them were; Goss then asked for a recess.

During this recess the Union Committee decided to make its offer to return to work to Dickens, although some of the Committee had doubts as to whether Dickens possessed the authority to make a decision. Goss testified that he understood that previously, when the men had offered to return to work at the plant gate, the "old contract" had been mentioned. Consequently, he suggested to the Committee, and it decided, that he would make the offer and that the other members of the Committee would not

enter the discussion until he had made it clear that the offer was completely unconditional. Goss cautioned the Committee members not to mention the "old contract."

When the meeting reconvened, Dickens stated that he was the "powers-that-be." Goss replied that then his problem was simplified and that he "was offering to return all the strikers unconditionally and wanted to know what schedule they should report on with no strings attached." Dickens asked if Goss meant an unconditional offer, and Goss replied "with no strings attached." The meeting recessed; and, when the parties met again that afternoon, Dickens informed the Union committee that he was authorized to state that the Respondent would not let the employees return until a new agreement had been reached which would include a no-strike clause and the term of agreement provisions which the Respondent wanted. Dickens stated that the strikers could return to work under the old contract if it was amended to include the no-strike clause and term-of-agreement provisions he referred to.

636

Goss asked Dickens if he did not consider the old contract in effect, and Dickens replied it was a legal question and he could not answer. Goss, during the meeting, informed Dickens that the Union's offer to return was unconditional and continuing. Dickens advised Goss that the Respondent's refusal to reinstate also was continuing unless the Union was notified to the contrary.

The witnesses both for the General Counsel and the Respondent, were in substantial agreement with regard to the events of the June 21, 1952, meeting as they related to the offer to return to work. There was a conflict, however, as to whether or not Goss' offer was to return to work under the terms of the "old contract." Goss, Young, Whitworth, Moore, and E. P. Shelton, all members of the Union Committee, testified that the "old contract" was not mentioned by Goss when he initially made the offer to return to work. Four of these witnesses also testified that Dickens was the first person to bring up the question of returning to work under the "old contract." During the cross examina-

tion of Shelton, portions of his testimony in the injunction proceeding on July 2, 1952, which indicated that Shelton had testified in that proceeding that Goss had said the strikers would offer their surrender and return to work under the existing agreement, were read to him. He had also testified in the Court proceeding that Walden, General Counsel for the International Union, had advised the Local members to return to work under the existing contract and that pursuant to that advice the Union had attempted to return to work. On redirect examination other portions of Shelton's testimony in the injunction proceeding were read to him which contained statements that if any strings were attached to Goss' offer he, Shelton did not hear them and that he at that time was willing to return to work unconditionally.

J. L. Dougherty, coordinator of labor relations for the Respondent, testified that Goss' offer "as he left it" was to have the men to return to work under the conditions of the old contract. On cross examination Dougherty explained that he had referred to an offer made toward the end of the meeting. At the negotiating meetings which he attended, Dougherty took shorthand notes which he

637

dictated to his secretary. When these notes were transcribed, they were distributed among the officials of the Respondent. After refreshing his recollection from these minutes Dougherty testified that the minutes accurately stated that "After the recess Mr. Goss stated that the Union offered an unconditional return of all the strikers and asked Mr. Dickens when the Company wanted the employees to return to work. . . . He said, 'we are ready and available.' Mr. Dickens stated that that is an operational problem and he couldn't say when they could return. Mr. Goss added, 'The union is not asking an increase in wages or anything else.'" Later on in the meeting, according to Dougherty, after his initial offer was rejected, Goss stated that the employees were individually offering to return to work under the existing contract.

Dickens' testimony regarding the June 21, 1952, meeting was in general agreement with that of the other witnesses. He, however, testified that Goss had said that he was making a unconditional offer for the men to return to work under the existing contract. Dickens, who testified that Dougherty's transcribed shorthand notes of the minutes were distributed among the Respondent's officials, stated that he had received a copy of the notes of the meeting of June 21, 1952, and that, although he had read them about a week or ten days after the meeting, he did not notice any discrepancies in the minutes. He, nevertheless, testified that he thought that Goss had at that point in the meeting stated that the men would return under the "existing agreement."

It thus appears that the witnesses agreed generally on the reinstatement aspects of the June 21, 1952, meeting; and that all the witnesses, including Dougherty, an official of the Respondent, but with the exception of Dickens, concur in the testimony that Goss did not condition the initial offer to return to work upon a continuation of the terms of the "old contract." It further appears that the Union committee specifically intended not to condition its offer to return to work upon the continuation of the "old contract" and attempted, by a committee meeting during a recess, to avoid any possibility of misunderstanding

638

on that score. The testimony of Dickens in this respect is further put in question by the notes of the meeting which were taken in shorthand by Dougherty, distributed to the Respondent's officials, and in which Dickens had found no discrepancies although he had read them within 7 to 10 days from the meeting. In view of these factors, we are of the opinion that the testimony of the bargaining committee members most accurately reflects what was said, and accordingly we credit their testimony in this respect.

During the meeting of June 21, 1952, after his initial offer to return to work had been rejected, Goss informed Dickens that the Selective Service Act guaranteed returned veterans one year's work after their discharge and requested that the veterans who had not had one year's work since

returning to the Respondent's employ from the armed forces be permitted to return to work. After another recess, Dickens stated that the veterans should apply to Sprague, plant superintendent, and he would tell them how and when to go to work. A request by Goss for a list of the veterans was rejected, and Goss was told that the union should notify the veterans at a meeting to apply to Sprague.

Following the meeting, for several days many employees, individually and in groups, in person and by telephone, made offers to return to work. They were informed that they would have to speak to Sprague who in many cases was not available. Certain employees, however, were permitted to go to work after June 21, 1952, when they had been individually interviewed by Sprague and had given him assurance that they would stay at work. Several veterans also were taken back at that time.

Goss, under date of June 23, 1952, wrote the Respondent, to the attention of Dickens, in confirmation of his offer of June 21, 1952, to have the men return to work. The letter stated: "As we told you at that time this offer to return to work was unconditional and is a continuing offer." On the same day, over the signature of Martin, the Respondent's president, the Respondent sent a letter to the Union and mailed copies of it to the strikers at their homes. This letter set forth the Respondent's last offer

639

and the Respondent's reason for insisting on a term-of-agreement provision and a no-strike clause. The letter also contained the statement: "Your union has suggested that the men represented by it be permitted to return to work, in which event the provisions of the new agreement between the Company and the Union could be worked out at a later date." The Respondent then stated in the letter that it could not accede to that suggestion as the union would not agree that the strikers would continue "to work thereafter for any period of time." The letter further stated that: "Therefore, we cannot settle this dispute until such time as the men and women you represent are willing to agree to go to work and continue to work for a period of at

least one year with no strike or other work stoppage during that period."

The nature of the Respondent's operations has particular significance in this case, in view of the Respondent's defense to the charge of having discriminatorily refused reinstatement. The basic product manufactured by the Respondent is anhydrous ammonia, of which the greater part is converted into ammonium nitrate solution, ammonium sulphate, and prilled or pelleted ammonium nitrate. The principal units of the plant are anhydrous ammonia, nitric acid, ammonium nitrate solution, ammonium nitrate pelleting, sulphuric acid and ammonium sulphate. Some of the plant equipment is operated at high temperature and pressures. In the manufacturing process in some of the units, particularly in the anhydrous ammonia section, expensive alloy tubes and catalysts are employed to achieve the proper chemical reactions.

Although the kind of tube used in the production of anhydrous ammonia has been improved, and, when the tubes have to be replaced, seamless tubes will be installed, the tubes now in use are welded. The plant is normally operated on a continuous basis, 24 hours a day every day in the year, and the tubes are kept at a uniformly high temperature. If the tubes are permitted to cool, there is the likelihood that they will break or crack at the welds. When this occurs the catalysts within are destroyed. The same possibility of damage exists in bringing a cooled-off unit to operating temperature. As

640

illustrative of the damage that may occur, Respondent's officials testified concerning an incident, occurring about one year before the hearing, where damage costing from \$175,000 to \$200,000 was caused by an operator who made the mistake of cutting the steam out of the reform tubes. The entire plant, including the anhydrous ammonia section, which, when this strike began was shut down to 75 percent of its production, was shut down completely in 1951. At that time 2 tubes were damaged with a cost of approximately \$9,000. During the strike involved in this

proceeding 2 tubes in the reform unit were cracked causing between \$3,700 and \$4,000 damage and \$2,400 damage occurred in the nitric acid plant.

On April 30, 1952, when approximately 613 employees went on strike, all of the plant, except 75 percent of the anhydrous ammonia section, was shut down. Supervisory, clerical and technical employees numbering 154 remained on the job. Between April 30 and June 21 they were augmented by 19 other employees making a total of 173 employees operating the plant on June 21, 1952, when the strikers offered to return to work. At that time all sections of the plant, except the sulphuric acid, ammonium sulphate, and pelleting plant, were in operation. According to the testimony of Sprague, plant manager, the 173 employees then at work were producing at a rate which would require 248 employees under normal operating conditions. This was accomplished by having the employees live in the plant and, from April 30, 1952, to May 7, 1952, working on a schedule of 4 hours on, 8 hours off, 4 hours on, 4 hours off, 4 hours on. After May 7, the men were permitted to go home once every three days for 16 hours. The sulphuric acid section started up on June 25, 1952, and the ammonium sulphate, on June 26, 1952. The pelleting plant did not operate until August 4, 1952, the day after the strike was settled.

On June 20, 1952, the Respondent assured the strikers that none of them had been replaced, and after the strike it continued to treat them as employees. Smith, Director of Labor Relations for the Respondent, testified that none of the strikers was discharged. The strikers were paid sickness benefits, employees' credit privileges were extended to them, and, upon

641

authorization to deduct their contribution to group insurance and hospitalization premiums from wages earned after the strike, the Respondent maintained its own and the employees' contributions to such insurance premiums.

2. The Parties' Contentions

The Respondent urges that the dismissal of the strikers' cross-complaint by the Union County Chancery Court where the strikers alleged damages and sought equitable relief is res judicata as to the claims of the strikers. It also contends that the employees were not entitled to be reinstated, as they had not complied with the clause of the contract which provided that employees on unauthorized absence not due to injury or illness would not be permitted to return to work without 8 hours notice. The General Counsel urges that, although the 8 hour provision was not applicable to a strike situation, nevertheless, the employees did give such notice of their intention to return.

The Respondent urges that a strike during a contract is a violation of Section 8 (d) (4) of the Act: neither party terminated the contract, and, even though the contract did not contain a no-strike clause, the strike during the existence of the contract was an unfair labor practice. The Respondent states that it is cognizant of the Board's decisions to the contrary, but urges the Board not to apply the principles of those cases to a situation where, as here, the strike was called as a part of a nation-wide strike in an industry where there is no history of industry-wide bargaining. The General Counsel relies on the Board's decision in United Packinghouse Workers of America, (Wilson & Co., Inc.), 89 NLRB 310.

It is further contended by the Respondent that, even if the refusal of the Respondent to reinstate the employees on and after June 21, 1952, was a lockout conducted by the Respondent to strengthen its bargaining position, the Respondent had the legal right to take such action. In support of its contentions, the Respondent cites the decisions of the Courts of Appeals in Morand Brothers Beverage Company v. N.L.R.B., 190 F. 2d 576, and Leonard et al. v. N.L.R.B., 197 F. 2d 435. Moreover, argues the Respondent,

its right to refuse to permit the strikers to return until they had agreed to remain at work is approved by the Board's decision in Betts Cadillac-Olds, Inc., 96 NLRB 268. It is urged that the rule of the Betts Cadillac case should be applied here, as neither the Union nor the men would give assurance that they would remain at work for any given time, the offer to return to work was made on the condition that negotiations would continue, the union contended that it had the right to strike under the contract, on June 4, and 5, 1952, Shelton, speaking for 3 groups who reported for work, stated that the men would report to work every time there was no picket line, substantial damage is caused when equipment is shutdown, and the Respondent feared that the men would return and then hold a work stoppage as a threat over the Respondent.

On the other hand, the General Counsel argues that the June 21, 1952, offer to return to work was one which the Respondent had a legal obligation to accept. It was an unconditional offer to return, and, moreover, the written offer 2 days later was also unconditional. However, according to the General Counsel, even if the offer were to go back to work under the contract, it would still create an obligation to reinstate, as the Board has held that an offer to return need only to seek a return to the status quo preceding the strike, (Seven-Up Bottling Co., 92 NLRB 1622, 196 F. 2d 424, and E. A. Laboratories, Inc., 80 NLRB 625) and a condition that contract negotiations continue is not such a condition as will vitiate the offer. Further, argues the General Counsel, as the Board held in Morand Brothers Beverage Company, 99 NLRB No. 55, the Respondent may not resort to a lockout in order to support its contractual demands, and, moreover, the lockout was in reprisal for the Union's going out on strike and was motivated by a desire to interfere with concerted activity, in that the Respondent conditioned reinstatement upon an abandonment of the right to strike for one entire year.

The General Counsel would distinguish this case from Betts Cadillac-Olds Inc., 96 NLRB 268, and International Shoe Company, 93 NLRB 907. In.

643

the present case, urges the General Counsel, there is no history of quick strikes without notice and no threat of another strike, so consequently the Respondent has no substantial and reasonable cause to believe that another strike was intended. In this case there is no danger that the Respondent would suffer undue hardship caused by a strike without adequate notice.

3. Conclusions as to the Refusal to Reinstate

The Respondent's contention that the Board is precluded from considering the claims of the strikers by reason of the dismissal of their cross-petition by the Union County Chancery Court we find to be without merit. The Board has paramount initial jurisdiction over the subject matter herein; nor was the Board a party to the injunction proceeding before the Chancery Court. Furthermore, the present proceeding is not one to adjudicate private rights, but is a proceeding to effectuate the public policy set forth in the National Labor Relations Act, as amended. (H. N. Thayer Co., 99 NLRB 1122; United Shoe Machinery Corp., 96 NLRB 1309, at 1325; and De Luxe Motor Stages, 93 NLRB 1425.)

The Board likewise finds without merit the Respondent's contention that the employees were not entitled to reinstatement, because they had not given 8 hours notice of intention to return to work in accordance with the provision of the contract which required such notice after unauthorized absence not due to injury or illness. We do not believe that such a provision is applicable to the particular circumstances of a strike situation and a request for reinstatement, such as present in this case. In any event, however, it is apparent from the record that such notice was in fact given by the Union to the Respondent.

As indicated above, on August 24, 1951, the first date when it could have done so under the contract, the Union notified the Respondent of its desire to modify the contract and informed the Federal Mediation and Conciliation Service and the State Labor Commissioner for the

State of Arkansas of that fact and of the existence of a labor dispute. The strike did not take place until April 30, 1952. Under the principle of United Packinghouse Workers of America (Wilson & Co., Inc.), 89 NLRB 310, the requirements of Section 8 (d) of the Act have been met, and the Board accordingly, rejects the Respondent's contention that the Union has failed to comply with Section 8 (d).

644

With respect to the issue of whether or not the Respondent was justified in refusing to reinstate the strikers, the General Counsel relies on the Board's decisions in Morand Brothers and Davis Furniture, and the Respondent cites the decisions of the Courts of Appeals in those cases. The Respondent, further, would have the Board decide the case in its favor in light of Betts Cadillac; the General Counsel urges that Betts Cadillac and International Shoe are inapposite.

In our opinion, the facts of the present case require the Board to distinguish this case from those relied on by both the General Counsel and the Respondent.

Morand Brothers involved a discharge of, and Davis Furniture involved a temporary lay-off of, employees by members of the association to which the struck employers belonged and through which they bargained.

The Betts Cadillac case also concerned a shutdown by members of an association when two of the members were struck. In that case the Board affirmed the Trial Examiner's recommendation that the complaint be dismissed. The operations of the employers involved in that proceeding were the repair and servicing of automobiles. Ninety-five percent of this work was completed the same day it was received. The threat of strike was present, and no assurance was given by the Union that the association members not already struck would be notified, before an extension of the strike to their operations, in time to finish the work in the shop.

In International Shoe, (where a majority of the Board dismissed the complaint) which more closely approaches the present case than the cases referred to above, the parties had agreed on a contract including a maintenance-of-membership clause, but the local union, although it had ratified the contract, deferred signing the agreement until it had been approved by the international union. At the time the employer was signing the agreement, a work stoppage occurred for the purpose of forcing non-union employees to join the union. This stoppage disrupted other departments of the plant. The same morning, the union notified the employer that the third shift employees in one of the departments would not report for work that day unless two employees working

645

there joined. The employer thereupon told the union that it would no longer agree to the maintenance-of-membership provision in the contract. When the third shift employees failed to report, the employer shut down the plant, which remained closed until a new contract was executed. Three days after the plant was closed, the union stated that the employees were willing to return under conditions existing at the time of the shutdown. The employer, however, aware of the union's coercive intent in instigating the quick work stoppages, refused to open the plant until the union had signed a contract containing a no-strike clause and an escape clause permitting resignations from the union of those who had joined after a certain date. The latter provision was intended to counteract the effect of the coercive tactics used by the union in recruiting membership.

In the present case, it is our opinion that the Respondent was not justified in refusing to reinstate the strikers until the Union signed a contract with a one-year no-strike clause and for a fixed one-year term without an automatic renewal clause.

It has been established for many years (N.L.R.B. v. Mackay Radio & Telegraph Co., 304 U. S. 333) that economic strikers who have not been replaced are entitled

to reinstatement upon their unconditional request. It is clear that here the strikers were not replaced and that they made an unconditional request to return to work. Even if, as contended by the Respondent, the request were made subject to continuation of negotiations and the terms of the existing contract, which had not been terminated, such "condition" would not be objectionable as it asked only that the Respondent do that which it was legally bound to do and to return to the situation which existed at the time the strike began. (See Seven-Up Bottling Company of Miami, 92 NLRB 1622, enf'd by the Court of Appeals for the Fifth Circuit in 196 F. 2d 424, and E. A. Laboratories, 80 NLRB 625).

The two principal grounds urged by the Respondent as justification for its refusal to reinstate the strikers are the nature of its operations and its fears of recurrent strikes without due notice within a short time. These factors are argued as the bases for its insistence in not permitting.

- 646 -

the employees to return until the Union agreed to relinquish the right to strike for one year and to execute what the Union termed a "sudden death" contract, i. e., one which would definitely expire on a certain date without any provision for automatic renewal or continuation beyond the one-year term.

In connection with the nature of the Respondent's operation, the record shows that, because of the temperatures and pressure under which some of the equipment operates, there is a likelihood of damage in both shutting down the plant and starting it up again. As indicative of that fact, damage to the equipment costing approximately \$6,400 occurred during the strike.

In our opinion, however, under the circumstances of this case, the Respondent has not proved a case of misconduct by the Union, delinquency by the employees in their obligations to the Respondent, or undue hardship to the Respondent. We are aware, of course, that almost all, if not all, strike situations cause some detriment of various

kinds to the parties involved, but, in our opinion, that alone is not sufficient to deny to the strikers their statutory right to reinstatement under the conditions of this case.

The damage to the Respondent's equipment and the probability of damage appear to be comparatively negligible in relation to the value of the plant, the large volume of business done by the Respondent, the loss of sales to customers during a complete shutdown, and the damage to equipment possible during full normal operation of the plant when there is no strike. Thus, it was estimated by a responsible official of the Respondent that the replacement value of the plant is \$55,000,000; the complaint alleged, and the Respondent admitted, that the Respondent during the calendar year of 1951 received raw material from outside Arkansas in excess of \$1,000,000 and sold, shipped and delivered finished products to other states valued in excess of \$1,000,000; and, that, as testified by Respondent's officials, a mistake by one operator about one year before the strike resulted in damage costing from \$175,000 to \$200,000. The Respondent's decision to operate as much of its plant as possible with its supervisory, clerical, and technical employees was motivated by its desire to minimize its loss in sales as well as to protect the equipment. It further appears from the record that one part of the

647

equipment (alloy tubes) most likely to fail has been improved, and, when it is replaced, the danger of damage in this respect will be greatly diminished, if not removed. The record also clearly shows that the Union has been most meticulous in its concern over minimizing the possibility of damage each time there has been a strike at the plant.

Further, in support of its contention that it had the right to refuse reinstatement until the strikers agreed "to remain at work," that is, until the Union agreed to forego the right to strike for one year, the Respondent relies on the facts, proved in the record, that the Union claimed the right to strike under the contract, that the Union re-

fused to agree not to strike for a one-year period, that several groups of strikers on June 4 and 5, 1952, stated that they would work when there was no picket line, and that the Union had, in fact, gone out on strike. The Respondent would further justify its refusal to reinstate upon fears expressed by its officials that the men would return to work and then hold a work stoppage as a threat over the Respondent.

It is our conclusion, however, that the Respondent's expressed fear of another strike within a short time was not based on the realities of the situation. The Respondent, itself, admitted that it had no criticism of any notice that the Union gave of its intention to strike, that it had not received any notice or threat from the Union or any source to support its fears, and that the only reasons for its premonition were those enumerated in the preceding paragraph.

The record amply demonstrates that the Union, in this and other previous strike situations at the plant, displayed the utmost concern that undue hardship should not be incurred by the Respondent, by giving the Respondent full and sufficient notice and offering to conduct the shutdown in an orderly manner at the direction of the Respondent. The record also shows that in the course of contract negotiations during the strike the Union by its proposals gave positive evidence, not only that it did not intend to go out again within a short time, but that, in fact, it was willing to forego its right to strike for certain periods of time, albeit short.

648

of the one-year period sought by the Respondent. Thus, on June 26, 1952, the Union offered to refrain from striking until the grievance involved in any dispute had gone through four steps of the grievance procedure, a process which was estimated to take from one to four months. On July 3, 1952, as a counterproposal to the Respondent's offer that the no-strike clause be inoperative after 10 consecutive unsuccessful discharge appeals, the Union suggested that the number of unsuccessful appeals be set at five. Likewise, on July 11, 1952, the Union proposed a no-strike

provision under which, if, after 60 days of negotiations, agreement was not reached, the Union would be free to strike.

On June 21, 1952, and the following days, the Respondent individually interviewed striking employees and reinstated them upon their assurance that they would not strike. This was done at a time when the Respondent unlawfully rejected the Union's attempts to get the employees back to work and when the Respondent declined to deal with the Union on grievances. In our opinion this conduct constitutes discrimination violative of the Act, as it required the employees, as a condition of employment, to give up their adherence to the Union as their bargaining representative in this respect and to return as individuals after personal interviews and not as a group.

In the circumstances of this case we find, therefore, that the Respondent violated Section 8 (a) (3) and (1) of the Act by discriminatorily refusing to reinstate the employees listed in the complaint and by individually interviewing the strikers and reinstating them upon their assurance that they would not strike at a time when the Respondent rejected the Union's attempts to get the strikers back to work and declined to deal with the Union on grievances.

C. THE REFUSAL TO BARGAIN

1. The Facts

The facts with regard to the bargaining conferences are, in the main, undisputed. On August 24, 1951, the Union, under the terms of the

649

contract in existence at that time, notified the Respondent that it desired to modify the agreement and specified 34 provisions of the contract which it desired to amend. Meetings began between the Union and the Respondent on August 29, 1951, and between that date and April 30, 1952, the date the strike began, 37 bargaining sessions were held. Between April 30, 1952, and August 3, 1952, when the strike was settled and the new contract executed, the

tract opening clause be retained which had been in the contract in effect at the time of the strike. Near the conclusion of the meeting the Union asked the Respondent if it would submit a list of "just what it would take to reach an agreement."

At the May 21, 1952, meeting the parties reviewed the negotiations up to that time. At the suggestion of the Federal Conciliator who was present the two committees met with him separately. After meeting with the Respondent's representatives, the Conciliator presented the Union committee with a written list submitted in response to the Union's request at the meeting of May 20, 1952. After the committee members had read the list, the union asked the Conciliator if he could get the Respondent to sign the proposal. The Conciliator did not know, and after going into the room in which the Respondent's representatives were meeting, returned, took back the written proposal of the Respondent from the Union, and went back into the room where the Respondent's representatives were. He later returned and stated that the Respondent would not sign the proposals. When the Union requested a copy of the proposals, the Conciliator, after conferring with the Respondent's representatives, stated that if he got one for himself, it would

652

not be available to the Union. When the Respondent and Union convened together as part of this meeting, the Respondent refused to give the Union a copy of the proposals, and Smith told the Conciliator that the two "absolute musts" were the Union's agreement to the no-strike clause and to the term of agreement provision. Although throughout the hearing the latter clause was referred to as the "July 1 termination date," it is apparent from the record that a July 1 expiration date for the initial term of the contract was not the issue, for the Union did not object to having the contract run from July 1 to July 1. Its objection was to the Respondent's proposed deletion of a clause for renewal in the absence of notice to terminate.

At the meeting of May 29, 1952, the parties reviewed the negotiations, but there was no change of position.

Again the Respondent stated its position that the two "fundamental" items were the no-strike clause and the termination date. On May 30, 1952, the Union wrote the Respondent's Board of Directors and protested that the Respondent's representatives had not been given authority to negotiate a contract to a conclusion, set forth the areas of dispute (term of agreement, no-strike clause, pay in lieu of notice on layoff, withdrawal by Respondent of agreement to upgrade certain classifications and to liberalize employees' benefits plans, and wage increases) the Union's position on these areas of dispute, and requested a meeting with the Board of Directors.

By June 13, 1952, the points in issue were increased by the Union's demand for the payment of the wage increase allowable under Wage Stabilization Board regulations without prior approval, from December 27, 1951, to April 30, 1952, the time the strike began. There was another meeting on June 14, 1952, at which the Respondent again explained that it wanted the contract to expire definitely on July 1, the same day that its contracts for the sale of fertilizer ended. The Union agreed to the July 1 date but proposed that reopening, modifying, notice to terminate, and automatic renewal on that date should also be provided for by provisions for reopening 120 days before July 1 and the giving of notice of termination 60 days before July 1. The

653

Respondent rejected this proposal.

On June 16, 1952, Smith, who became ill, was replaced by Dickens as spokesman for the Respondent's representatives. The Respondent offered in writing a termination provision, an interpretation of which was requested by the Union of Dickens, who found it necessary to go into recess before he could reply. On June 17, 1952, the parties reached tentative agreement on a pay in lieu of notice clause. The Union asked the Respondent to give it the Respondent's best offer not containing a no-strike clause which the committee could take to the Union membership in an effort to settle the strike. Dickens replied that the

Respondent "still had two fundamentals that they had to have," the no-strike clause and the termination provision, and had no proposals to offer which would not contain both those items. On June 18, 1952, Dickens stated that the Respondent would not sign any kind of a contract unless it contained both these clauses.

The parties met again on June 20, 1952. The Union was still willing to accede to the Respondent's demand for a July 1 termination date, but it still wanted a 60-day period for notification of desire to modify and a 60-day period in which notice to terminate would be permitted. The Union representative, Goss, asked Dickens, if the Union accepted the Respondent's proposal on the term of agreement, would the Respondent withdraw its demands for a no-strike clause. Dickens replied in the negative, to the effect that a contract acceptable to the Respondent would have to contain both provisions.

The events of the June 21, 1952, meeting relating to the offer to return to work and the refusal to reinstate are treated under that section of these proposed findings. The meeting also dealt with the contract proposals of the parties. As recited elsewhere, the Union questioned Dickens' authority, but upon Dickens' assurance that he was the "powers that be" to negotiate a contract, it tendered him its offer to return to work. Dickens' reaction indicates clearly that he was not empowered, at least, to reject or accept the Union's offer to end the strike. During the early part of the meeting there was a discussion of the no-strike clause. Goss asked Dickens,

654

if the Union could trade agreement on the termination clause for the Respondent's withdrawal of the no-strike clause. Goss and E. P. Shelton testified that Dickens replied that he did not think so, and in reply to this specific question, stated that the no-strike clause was a "must" item. Dickens testified that Goss had asked if the Respondent had an offer to make that did not contain a no-strike clause, that he had replied in the negative, that he asked Goss to make an offer containing such a clause, and

that Goss said that he had no such offer to make. Dickens, however, confirmed the accuracy of the minutes of the meeting prepared by Dougherty, (The preparation and use of these minutes at the hearing are discussed fully in the section of these proposed findings regarding the refusal to reinstate.) which reported that in reply to Goss' direct question, Dickens stated that it was the Respondent's position that a no-strike clause was a "must" item. At this meeting Dickens stated that "his instructions were that the company cannot put the employees back to work until we have an agreement and that agreement will include a no-strike clause and termination date of July 1." Goss asked Dickens for several items of information including a list of all employees working, of the jobs that were filled, a statement of whether there were any supervisors working, a statement of how the Respondent desired the employees to comply with the grievance procedure under the contract, and a list of all veterans who had not had one year's work since their return from the armed forces. Goss also requested a meeting on grievances for the next day; in view of the Respondent's refusal to reinstate, the Union was requesting two weeks pay in lieu of notice of layoff under the "old" contract. After a recess, requested by Dickens, Goss' requests were denied. The Respondent also declined to entertain any grievance on the ground that the contract was not in effect. On June 23, 1952, the Union sent a written request for a grievance meeting to Martin, the Respondent's president.

Meinert, Respondent's vice-president, entered the negotiations on June 25, 1952, when the Respondent withdrew its alternative proposals and

655

agreed to the 15 cents per hour increase with 6 cents and 12 cents shift differentials (which the Wage Stabilization Board was approving in other cases), to grant a seventh holiday, and to return to its previous agreement on classifications, insurance, and annuities. The Respondent rejected the Union's request for retroactive pay and continued to adhere to its demand for a no-strike clause and the termination clause without provision for automatic

renewal. These 3 items were the principal differences which remained in issue. On June 26, 1952, the Respondent stated that the "old" contract was not in effect, that it would not consider the grievances of the employees under that contract, if presented by the Union, but would entertain grievances from individual employees. The Union offered to accept a no-strike clause provided that the fifth step of the grievance procedure be eliminated and further provided that, after a grievance had gone through the fourth step of the grievance procedure without settlement, the no-strike clause would be inoperative. The first four steps of the process would take the grievance through the foreman, plant manager, plant superintendent, and the Director of Industrial Relations; the fifth step would be arbitration. It was estimated that it would take from 1 to 4 months for a grievance to go through the 4 steps. The Respondent rejected this proposal. On July 3, 1952, the Respondent proposed that the no-strike clause be inoperative if the Union lost 10 successive discharge cases processed through to a special appeal to the Respondent's president or vice president. The Union suggested 5 successive discharges, but that was not acceptable to the Respondent. Nor was the Union's proposal that the no-strike clause be inoperative if an arbitrator in a grievance proceeding held that the Respondent had violated the contract.

In response to the Union's request to meet with the Respondent's Board of Directors, the Chairman of the Board (Barton) and the Respondent's president (Martin) met with Goss and Marsh on July 3, 1952. During this meeting Barton stated that, when the strike was over, the top personnel would do all they could to avoid any future trouble and asked the Union's reason for opposing a no-strike clause. He was informed that the employees worked with the lower levels of management and were fearful that, if a no-strike clause was put into

the contract, the lower levels of management would take advantage of the strength that would give the Respondent. Barton then told the Union representatives that "We are

going to insist on one thing and that is you sign a contract with a no-strike clause in it. . . . We may have to go to extreme measures to sign that kind of agreement with you. . . . We are going to insist you sign a no-strike clause contract." The nature of the "extreme measures" was not explained.

On July 11, 1952, the Union again met with Meinert and proposed a no-strike provision under which, if, after 60 days of negotiations, agreement was not reached, the Union would be free to strike. The Respondent's representatives stated that it wanted a no-strike contract for a full year's duration and that the Union's proposal was for a contract for only 60 days. The Union further requested the Respondent's reaction to an agreement whereby the Union would accept the Respondent's term of agreement proposal, i. e., one without an automatic renewal or continuation provision, for the Respondent's acceptance of a clause providing that there be no strike unless sanctioned by a vote, under secret ballot, of 75 percent of the employees in the bargaining unit. This proposal was rejected at a meeting held the next day on July 12, 1952.

At the July 11 meeting, the withdrawal of unfair labor practice charges which had been filed with the National Labor Relations Board was discussed, and Respondent informed the Union that it expected the Union to withdraw the charges. With respect to the same subject, the dropping of the charges, Shelton, Young, and Whitworth, members of the bargaining committee, testified that on July 16, 1952, Meinert stated that Respondent "would not even sign this type of a no-strike clause unless we would drop all charges pending with the NLRB and file no charges in the future out of anything that happened during the strike," that, as the Union would not withdraw the charges, "we can't make an agreement then," and that "there wouldn't be a contract unless we did drop the NLRB charges." Meinert stated that the minutes of the meeting

prepared by Dougherty and discussed earlier in these findings were incorrect when they stated that, "Mr. Goss said

parties held approximately 27 additional meetings. From August 29, 1951, to June 13, 1952, the Respondent's representatives were led by Smith, Director of Industrial Relations. When he became ill, Dickens, one of the Respondent's lawyers became spokesman for the Respondent. Meinert, a director and vice-president of the Respondent, conducted the negotiations through the period of June 25, through July 17. Meinert suffered an injury to his leg on July 6, 1952, but held three or four meetings in his room at the hospital, after which he was unable to continue with the conferences. Negotiations were concluded by Davis, Respondent's counsel and a director of the company. On June 29, 1952, at the Union's request Meinert addressed a Union membership meeting and explained the Respondent's reasons for its proposals at the bargaining conferences. On July 3, 1952, at the Union's request, Barton, chairman of the Respondent's Board of Directors and T. M. Martin, president of the Respondent, met with Goss, International Representative of the Union, and Marsh, local member of the bargaining committee. Martin also attended a meeting preceding the strike on April 30. During the negotiations the Union committee was headed by 4 different international representatives and a member of the local bargaining committee who was authorized to act as an international representative.

By February 1952 when the Union took its strike vote and notified the Respondent of its intent to strike, the parties, who had been negotiating since August 29, 1951, had still not reached agreement on wages, shift differentials, paid holidays, certain classifications, sickness benefits,

650

clothing allowance, and a pay in lieu of notice provision. Immediately before the strike, a series of meetings was held on April 28, 29, and 30; there had been no agreement on the questions which were still in issue in February. At the April 28 meeting the Respondent for the first time stated that it wanted a no-strike clause in the contract. At the April 29 meeting the Respondent revised its wage offer, and the Union cut down the amount of the wage in-

crease which it requested. At the beginning of the afternoon meeting on April 30 (There apparently were meetings in the morning and night also on April 30) the Respondent requested a revision of the pay in lieu of notice clause and the no-strike clause. Later in the meeting the Respondent increased its wage offer 2 cents an hour and stated, that, if the Union would accept the Respondent's revision of the pay in lieu of notice clause, it would withdraw its request for a no-strike clause. The Respondent's offer was rejected by a membership meeting of the Union, and the strike began at 11:00 that night.

During the strike negotiations continued. On May 20, 1952, the Respondent made alternative proposals. Under one of them, the Respondent offered a wage increase of 15 cents an hour and 6 and 12 cents shift differentials. It also agreed to a seventh paid holiday but withdrew previous proposals which had been agreed to by the Union regarding group insurance and annuities and certain classification upgradings. The alternative proposal contained 13½ cents an hour wage increase, 6 and 12 cents shift differentials, and the insurance and annuities previously agreed to, but no seventh holiday. Both proposals contained a no-strike clause and a revision in the provision for the duration and termination of the contract, which also provided for a July 1 termination date. This revision read: "This agreement shall remain in full force and effect from the date of its execution until 12:01 a. m.

651

July 1, 1953." The record does not show that a revision of the termination provisions had been proposed before this date, and a witness who testified regarding this meeting did not recall that there had been a discussion of a termination provision previously. The Respondent informed the Union that the Respondent's contracts for the sale of fertilizer ran from July 1 to July 1 of the next year, and it wanted its labor contracts to have the same anniversary date. The Union did not oppose changing the anniversary date to July 1, but it did oppose having the contract definitely end on a certain date without provision for renewal, and it urged that the same kind of con-

the Union would not drop them and Mr. Meinert replied that we won't settle." He did, however, recall that in effect he had stated, as quoted in the minutes, that he did not think the Respondent would sign a contract unless the Union dropped the unfair labor practice charges. In view of the testimony of the 3 members of the bargaining committee, the minutes of the meeting prepared by an official of the Respondent, and Meinert's testimony itself, despite his denial that he said the Respondent would not settle without the withdrawal of the charges, we believe that the testimony of Shelton, Young, and Whitworth gives a more accurate account of this incident, and we credit them in this respect. Accordingly, we find that at the meeting of July 16, 1952, Meinert conditioned the signing of a contract upon the withdrawal by the Union of unfair labor practice charges pending before the Board.

Also at the July 16, 1952, meeting, there was discussion about how the men who were returning to work did it, and how the other strikers were going to get back to work. Meinert stated that the men were returning on their own initiative, but that the Respondent would not let the entire group of strikers back until the contract was signed.

On July 12, 1952, the Respondent had submitted a list of 11 points for the settlement of the strike; two of the points were the withdrawal of the pending charges and the withdrawal and waiver of any grievances which occurred during the strike. The first of these demands were withdrawn by Respondent on July 30, and the second on July 31, 1952.

On August 3, 1952, the contract was executed by the parties. With respect to the term of the agreement, the significant changes are that the initial term of the contract runs from August 3, 1952 to June 30, 1953, and instead of a minimum 60 days notice of termination, the new agreement provides that the contract will terminate 48 hours after the notice to terminate. The 60 days notice to amend remains essentially the same, and the contract continues in effect until cancelled as described above. The new contract

658

contains a no-strike, no-lockout clause on matters arising out of disputes which can be referred to arbitration under the agreement, or relating to a wage, wages, and the discharge of a person without seniority. Under the terms of the contract, the no-strike, no-lockout clause is to be rendered inoperative upon the failure of the Respondent to comply with the decision of the arbitration board.

2. The Parties' Contentions

The General Counsel contends that the Respondent violated Section 8 (a) (5) by its adamant position on the no-strike and term of agreement clauses, interjected into the bargaining conferences after substantial agreement had been reached on many items, by failure to give Dickens sufficient authority to permit him to make commitments, by dealing with individual strikers as to reinstatement while refusing to discuss the matter with the Union, by refusing to furnish the information requested by the Union at the June 21 meeting, and by conditioning the reinstatement of the strikers and the signing of an agreement upon the withdrawal of the unfair labor practices charges in this case. The General Counsel also contends that the Respondent's conduct in refusing to recognize that the contract was in effect and to permit the union to administer it during the strike is an illegal refusal to bargain. Although during the negotiations the Respondent contended that the contract in effect at the time of the strike, April 30, 1952, was no longer in effect, in its answer to the complaint in this case, the Respondent has alleged that the contract was in full force and effect for the entire period of June 21, 1952, through August 3, 1952.

The Respondent urges that its insistence on a no-strike clause and termination date was not violative of 8 (a) (5)—that bargaining for such clauses is not per se violative—that at all times it was properly represented at the meetings, that it had the right to refuse to permit workers to return to work until they agreed to remain at work, and that the Respondent's attempt to get the Union to withdraw the NLRB charges as part of

the strike settlement was not a failure to bargain as it was not made as a condition precedent to concluding an agreement and as it did not prevent a settlement.

3. Conclusions as to the Refusal to Bargain

On March 23, 1944, the Union was certified by the Board as bargaining representative of the Respondent's production employees with certain exceptions. On August 12, 1946, the Union and the Respondent executed their first contract for employees of the operating department and the chemical laboratory. In June 1947 the labor department employees were included in the contractual bargaining unit. The contract in the record, which was in effect at the time of the strike, describes the unit for which the Union was recognized by the Respondent as bargaining representative. In substance the parties do not now challenge this unit.

It is found that the following employees of the Respondent at its Chemical Plant at El Dorado, Arkansas, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9 (c) of the Act: All production, chemical, and operating employees and all janitors, porters, maids and laborers, excluding all other maintenance employees, guards, firemen, office and clerical employees, non-working foremen, and all supervisors, as defined in the Act.

The Respondent's answer to the complaint admitted that the Respondent has recognized the Union as the exclusive bargaining agent, and it does not now challenge the Union's majority status. The complaint alleged, and we find, that at all times material hereto a majority of the employees, in the unit above found appropriate, designated or selected the Union as their representative for the purposes of collective bargaining.

The first question to be considered in connection with the allegation that the Respondent unlawfully refused to bargain is the Respondent's position with respect to its demands for a no-strike clause and a contract without an automatic renewal clause.

On April 28, 1952, approximately 8 months after negotiations began, 2 months after the employees notified the Respondent of their intention to strike, and 2 days before the strike, after several postponements actually occurred, the Respondent for the first time stated that it wanted a no-strike clause in the contract. On May 20, 1952, the Respondent for the first time insisted on a contract without an automatic renewal clause. After these dates the Respondent stated that it would not sign a contract, settle the strike, or permit the strikers to return to work unless the Union agreed to these provisions.

Under certain conditions the Board would, and has, found conduct similar to that described above to be one of the elements evidencing bad faith in bargaining relations (See Tower Hosiery Mill, Inc., 81 N. L. R. B. 658). An analysis, however, of the proposals, counterproposals, and the final agreement on the two issues primarily in dispute, made during, and reached after, a course of bargaining which included approximately 64 meetings in approximately eleven months, indicates that, despite the Respondent's position, there was a "give and take" during the negotiations, and the Respondent's insistence upon its demands was not such as to evidence bad faith.

Nor do we find Dickens' status as Respondent's representative from June 16 to June 25, 1952, indicative of bad faith. We do not believe it necessary to determine whether or not Dickens had been invested with authority sufficient to make him a genuine representative for negotiating purposes. The period during which Dickens was the principal spokesman for the Respondent—June 16 to June 25—when viewed in the total picture of the numerous bargaining conferences, is negligible in contrast. Furthermore, the record shows that at all other times the Respondent was represented by responsible officials of the Respondent and that each change of representative, except the replacement of Dickens, was occasioned by illness. Thus, Smith, Respondent's Director of Industrial Relations, led the Respondent's representatives from August 29, 1951, to June 13, 1952, when he became ill and was replaced by

Dickens, one of the Respondent's attorneys. Meinert, a director

661

and vice-president of the Respondent, who succeeded Dickens, was forced by a personal injury to withdraw after conducting several conferences in the hospital to which he was confined. His successor in negotiations was Davis, Respondent counsel and a director of the company. On other occasions the Respondent's president and Respondent's chairman of the board of directors also met with Union representatives.

The Board does, however, find violations of Section 8 (a) (5) in (1) the Respondent's dealing with individual strikers at a time when the Union had abandoned the strike by offering the unconditional return to work of the strikers and the Respondent had refused to deal with the Union on the matter; (2) the Respondent's conditioning of the signing of an agreement upon the withdrawal of the unfair labor practice charges in this case; and (3) the Respondent's refusal to recognize that the contract was in effect, not having been terminated, and to permit the Union to administer it during the strike.

The record is clear that the Respondent refused to discuss, beyond a flat rejection of the Union's offer of the return to work of the strikers, the Union's request for reinstatement and that it also informed the Union that it would not permit the Union, in performance of its obligations as bargaining representative, to present grievances for the strikers. During this time, however, the Respondent did individually interview strikers and, upon securing certain agreements from them, permitted them individually to return to work. The Respondent also informed the Union that, although it would not consider the grievances of the employees, if presented by the Union, it would entertain grievances from individual employees. We view this conduct as bypassing the Union in derogation of the Union's status as exclusive bargaining representative, and thus it constitutes a refusal to bargain in violation of the Act.

The record is equally clear that the Respondent made the withdrawal of the unfair labor practice charges a

condition precedent to the signing of an agreement. The initiation of unfair labor practice proceedings does not

662

suspend the operation of the Act; nor does it relieve the Respondent of the duty to bargain. As the Court of Appeals for the Fourth Circuit declared in Hartsell Mills, the Respondent "could not thus make its compliance with the act dependent upon dismissal of charges that it had been guilty of violating it." We, therefore, in accordance with well established policy (See American Laundry Machinery Company, 76 N. L. R. B. 981, The Toledo Desk & Fixture Co., 75 N. L. R. B. 744, and Hartsell Mills Company, 18 N. L. R. B. 268, enf'd. as modified in 111 F. 2d, C. A.-4.) find that this conduct also violated Section 8 (a) (5) of the Act.

Finally, there remains for consideration the Respondent's repeated denial that the last contract before the one executed on August 3, 1952, was still extant after April 30, 1952, the date of the strike, and its refusal to permit the Union to administer the contract. Under the terms of the contract, as neither party had given the notice of termination provided for, the contract remained "in full force and effect;" the strike of April 30, 1952, did not breach or terminate the agreement.

It is true that the Board will not find a violation of a contract to be an unfair labor practice. The Board's reasons for that policy are given in United Packinghouse Workers of America (Wilson & Co., Inc.), 89 N. L. R. B. 310 at 317. We, however, do not view the Respondent's conduct in this respect as a mere breach of contract; it goes to the fundamental concept of the Union's status as bargaining representative of the Respondent's employees. Under the circumstances of this case, the Respondent had a statutory obligation to recognize the Union as the exclusive bargaining representative and to permit the Union to function as such. To deny the Union recognition as the exclusive agent under the contract and to frustrate its performance as such bargaining agent constitutes, in our opinion, a failure by the Respondent to fulfill its statutory duty to bargain under Section 8 (a) (5) of the Act.

We also find that, as the Respondent's conduct constituted a failure to bargain, it thereby interfered with, restrained, and coerced the Respondent's employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8 (a) (1).

663**D. ALLEGED VIOLATION OF SECTION 8 (a) (4)**

The General Counsel contends that the demand by the Respondent that the unfair labor practice charges in this case be withdrawn as a condition to a strike settlement and the execution of an agreement also violated Section 8 (a) (4) as well as Section 8 (a) (5), in that at the same time, the Respondent refused to reinstate the strikers until a settlement and contract were agreed to, thereby discriminating against the strikers because of the charges filed in their behalf. The General Counsel further contends that discrimination against employees because of charges filed by a union on their behalf will support a Section 8 (a) (4) complaint.

The Respondent interposes the same defenses against this allegation as it does against the charge that the same conduct constitutes a violation of 8 (a) (5), that is, that the demand was not a condition precedent to concluding an agreement and that such a request is not an unfair labor practice if it does not prevent a settlement. In addition, the Respondent urges that Section 8 (a) (4) applies only to an individual employee who has filed an unfair labor practice charge or who has given testimony in a Board proceeding.

As the Respondent's demand that the charges be withdrawn was retracted approximately 14 days after it was made and as the policies of the Act will as well be effectuated by a remedial order based upon a finding that the Respondent in this case violated Section 8 (a) (3) of the Act, we find it unnecessary to determine whether or not the Respondent also violated Section 8 (a) (4).

IV. The Effect of the Unfair Labor Practices Upon Commerce

The Board finds that the activities of the Respondent set forth in Section III, above, occurring in connection with the operations of the Respondent described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening or obstructing commerce and the free flow thereof.

664

V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action which will effectuate the policies of the Act.

It has been found that the Respondent discriminated in regard to the tenure of employment of their employees by refusing them reinstatement from June 21, 1952, to August 3, 1952. Although these employees were offered reinstatement on August 3, 1952, they are entitled to reimbursement for working time lost as a result of the discriminatory action. The Board will therefore order the Respondent to make whole each of its employees for any loss of pay he may have suffered by reason of the discrimination against him, by payment to him of a sum of money equal to that which he normally would have earned in such position, from the date of the discrimination against him to the date of his reinstatement, less his net earning during said period. The back pay shall be computed in the manner established by the Board, and the Respondent shall make available to the Board, upon request, payroll and other records to facilitate the checking of the back pay due. (F. W. Woolworth, 90 NLRB 289)

It has also been found that the Respondent by certain conduct violated Section 8 (a) (5) and (1) of the Act. We shall order that it cease and desist from such activities. However, under the circumstances of this case, we do not believe that an affirmative order to bargain is necessary; we shall, therefore, omit such bargaining order.

Upon the basis of the above findings of fact and upon the entire record in this case, the Board makes the following:

Conclusions of Law

1. Oil Workers International Union, CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of employment of the employees who went out on strike on April 30, 1952, whose names are

665

listed in the complaint herein, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act.

3. All production, chemical, and operating employees and all janitors, porters, maids, and laborers, at the Respondent's Chemical Plant at El Dorado, Arkansas, excluding all other maintenance employees, guards, firemen, office and clerical employees, non-working foremen, and supervisors, as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

4. Oil Workers International Union, CIO, was on April 30, 1952, and at all times since has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Oil Workers International Union, CIO, as the exclusive representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Sec-

tion 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

7. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lion Oil Company, El Dorado, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Oil Workers International Union,

666

CIO, or in any labor organization, by discharging, or refusing to reinstate, any of its employees, or by discriminating in any other manner with regard to their hire, tenure of employment, or any term or condition of employment;

(b) Refusing to bargain collectively with Oil Workers International Union, CIO, as the exclusive representative of the employees in the unit herein found to be appropriate;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form labor organizations, to join any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such

right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole the employees who went out on strike on April 30, 1952, and who are listed in the complaint herein for any loss of pay they may have suffered by reason of Respondent's discrimination against them, in the manner set forth in the section above entitled, "The Remedy";

(b) Post at its plant in El Dorado, Arkansas, copies of the notice attached hereto, marked "Appendix A."¹ Copies of such notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by Respondent's representative, be posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken

667

by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Fifteenth Region, in writing, within ten (10) days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent discriminated against its employees in violation of Section 8 (a) (4) of the Act.

¹If this Order is enforced by a decree of a United States Court of Appeals the attached notice shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" in the caption, the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

Signed at Washington, D. C.

John M. Houston, Member
Ivar H. Peterson, Member
National Labor Relations Board

(Seal)

ABE MURDOCK, MEMBER, dissenting:

I am unable to agree with the majority of this panel that the strike of April 30, 1952, was protected activity. It is my opinion that the strike on that date was undertaken by the Union in violation of Section 8 (d) of the Act and that the strikers therefore lost the status of employees protected by the statute.

The General Counsel has urged and the majority has found that on April 30, 1952, the date of the strike, a contract was in "full force and effect." With this finding I am in complete agreement. According to the provisions of the contract, which are quoted in the majority opinion, the contract became one with no expiration date after October 23, 1951, unless canceled in the manner provided for in the contract. The method of termination is clearly defined in the contract. Either party desiring to amend the contract was to give such notice not earlier than August 24, 1951, sixty

668

days before the end of the initial term. If agreement on modification was not reached within the 60-day period, the contract became one terminable upon the giving of 60-days' notice of termination by either party. The record discloses that neither party gave the notice to terminate provided for by the contract, and thus it continued in effect up to August 3, 1952, when a new contract was executed.

Section 8 (d) of the Act provides certain standards by which the Board must determine whether employers and labor organizations have fulfilled their duties to bargain collectively under the Act. The relevant portions of Section 8 (d) pertinent to the situation where a contract is in existence are as follows:

... Where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such a termination or modification—

- (1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;
- (2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;
- (3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and
- (4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

... Any employee who engaged in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9 and 10 of this Act, as amended

NLRB 310 at 319; the language of Section 8 (d) is plain and unambiguous. It sets forth the procedure to be followed in the termination or modification of a contract at its expiration date. My reasons for reaching this conclusion are discussed fully in my opinion in the Wilson & Co. case. It is sufficient here to say that not only does the wording of the several subsections of Section 8 (d) show that Congress was prescribing certain standards of conduct during the period around the expiration of a contract, but the legislative history concerning the proviso also supports this view.

In the present case, the Union notified the Respondent on August 24, 1951, of its desire to amend the contract. It also notified the Federal Mediation and Conciliation Service and the State Labor Commissioner of the existence of a labor dispute. However, under the terms of the contract that notice did not terminate the contract, and, when October 23, 1951, the end of the sixty-day period after the notice to modify and the end of the initial term of the contract, arrived, the contract did not expire, but under its terms was converted into a contract terminable at will upon the giving of a 60-day notice to terminate. At any time thereafter, upon the giving of the 60-day notice of termination required by its terms, the contract was subject to termination, but it was not so terminated.

Section 8 (d) (4) required the Union to refrain from striking for a period of sixty days after notice was given or "until the expiration date of such contract, whichever occurs later." It is questionable to me that the "notice" given by the Union here, and in the circumstances of this case, is the kind of notice contemplated by the statute. However, it is not necessary to determine that question, for, in any event, the extension of the contract continued, as neither of the parties gave the notice to terminate. Even assuming that the notice to modify given on August 24, 1951, met the requirements of the statute, the expiration date, which occurred later,

670

became the significant date and the one which marked the end of the Union's obligation to refrain from striking. As the Union did strike within this period, it violated Section 8 (d) (4) and the strikers thereby lost their status as employees of the Respondent and were not entitled to reinstatement at any time after they struck on April 30, 1952.

In view of the Union's failure to comply with Section 8 (d) of the Act and the Respondent's genuine attempts to reach a collective bargaining agreement from August 29, 1951, to August 3, 1952, when a new contract was executed, I would not find a violation of Section 8 (a) (5) in the isolated incidents upon which the majority finds a technical violation.

As I would find neither a violation of Section 8 (a) (3) nor Section 8 (a) (5), I would dismiss the complaint herein.

Signed at Washington, D. C. July 30, 1953.

Abe Murdock, Member
National Labor Relations Board

671

APPENDIX A

NOTICE TO ALL EMPLOYEES PURSUANT TO A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OIL WORKERS INTERNATIONAL UNION, CIO, or in any other labor organization of our employees, by discriminating against them in regard to their hire and tenure of employment or any term or condition of employment.

WE WILL NOT in any manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL MAKE whole the employees who went on strike on April 30, 1952, for any loss of pay suffered as a result of the discrimination against them between June 21, 1952, and August 3, 1952.

WE WILL NOT engage in any acts, in any manner interfering with the efforts of OIL WORKERS INTERNATIONAL UNION, CIO, to negotiate for, or represent, the employees in the bargaining unit consisting of:

All production, chemical, and operating employees and all janitors, porters, maids, and laborers, at our Chemical Plant at El Dorado, Arkansas, excluding all other maintenance employees, guards, firemen, office and clerical employees, non-working foremen, and supervisors as defined in the Act.

Lion Oil Company
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Exceptions by the Respondent Lion Oil Company to the Proposed Findings of Fact, and Proposed Conclusions of Law, and Proposed Order Issued by the Board under Date of July 30, 1953.

Comes Lion Oil Company, Respondent in the above entitled case, and files these, its exceptions to the Proposed Findings of Fact, and Proposed Conclusions of Law, and Proposed Order, issued by the Board in this case under date of July 30, 1953.

With respect to each portion of the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, issued in this case under date of July 30, 1953, referred to in these Exceptions, the page at which the portion to which reference is made is found, will be referred to by number, followed by the line on that page on which the portion begins. Both the number of the page and the line will be preceded by the letter "O".

The page and line to which each portion of the testimony, and each Exhibit, in the transcript of the testimony and exhibits adduced in the hearing before the Trial Examiner, will be followed by a reference to the number of the page on which the matter involved is shown, followed by the number of the line on the page, both the number of the page and the line being preceded by the letter "R".

Exceptions to Findings of Facts contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, under the heading "A. BACKGROUND AND SUMMARY OF EVENTS" (O-3-25)

1. The Respondent excepts to the Finding of Fact "Negotiations on modifications of the contract began on August 29, 1951." (O-5-3)

2. The Respondent excepts to the Finding of Fact "On February 14, 1952, the employees voted to strike and notified the Respondent." (O-5-4)

Exceptions to Findings of Facts contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, under the heading "B. DISCRIMINATORY REFUSAL TO REINSTATE" (O-5-18)

3. The Respondent excepts to the Finding of Fact "On August 24, 1951, in accordance with Section 8 (d) of the Labor-Management Relations Act, the Union notified the Respondent, Federal Mediation & Conciliation Service, and the State Labor Commissioner for the State of Arkansas, that it desired to modify the contract, and that a labor dispute existed." (O-6-14)

4. The Respondent excepts to the Finding of Fact "Throughout the negotiations, which continued after the strike, the Respondent's position was that the strike had breached and thus terminated the contract." (O-6-20)

5. The Respondent excepts to the Finding of Fact "On June 4 and 5, 1952, E. P. Shelton, officer of the Local and Chairman of the local bargaining committee, appeared at the plant gate with three groups of strikers, and stated that they had reported to go to work. When Shelton, in response to a question from Sprague, plant superintendent, stated that the men would report for work when then was no picket line, Sprague stated that he could not permit them to return under such conditions. The International Association

674

of Machinists, which had been on strike since the expiration of its contract on May 15, 1952, and which maintained a picket line until June 20, 1952, when it signed a contract with Respondent, temporarily withdrew its pickets on each of these occasions but immediately resumed picketing when the groups departed." (O-7-11)

6. The Respondent excepts to the Finding of Fact "The strikers were paid sickness benefits, employees' credit privileges were extended to them, and upon authorization to deduct their contribution to group insurance and hos-

pitalization premiums from wages earned after the strike, the Respondent maintained its own and the employees' contributions to such insurance premiums." (O-13-29)

7. The Respondent excepts to the Finding of Fact "In this case there is no danger that the Respondent would suffer undue hardship caused by a strike without adequate notice." (O-16-4)

8. The Respondent excepts to the Finding of Fact "In any event, however, it is apparent from the record that such notice was in fact given by the Union to the Respondent." (O-16-23)

9. The Respondent excepts to the Finding of Fact "As indicated above on August 24, 1951, the first date when it could have done so under the contract, the Union notified the Respondent of its desire to modify the contract, and informed the Federal Mediation & Conciliation Service, and the State Labor Commissioner for the State of Arkansas, of that fact, and of the existence of a labor dispute." (O-16-26)

10. The Respondent excepts to the Finding of Fact "The record also clearly shows that the Union has been most meticulous in its concern over minimizing the possibility of damage each time there has been a strike at the plant." (O-20-3)

675

11. The Respondent excepts to the Finding of Fact "It is our conclusion, however, that the Respondent's expressed fear of another strike within a short time was not based on the realities of the situation." (O-20-17)

12. The Respondent excepts to the Finding of Fact "The record amply demonstrates that the Union, in this and other previous strike situations at the plant, displayed the utmost concern that undue hardship should not be incurred by the Respondent, by giving the Respondent full and sufficient notice and offering to conduct the shut down in an orderly manner at the direction of the Re-

spondent. The record also shows that in the course of contract negotiations, during the strike, the Union, by its proposals, gave positive evidence, not only that it did not intend to go out again within a short time, but that, in fact, it was willing to forego its right to strike for certain periods of time, albeit short of the one year period sought by the Respondent." (O-20-24)

Exceptions to conclusions of law contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and the Proposed Order, under the heading "B. DISCRIMINATORY REFUSAL TO REINSTATE" (O-5-18)

13. The Respondent excepts to the conclusion of law "The Respondent's contention that the Board is precluded from considering the claims of the strikers by reason of the dismissal of their cross petition by the Union County Chancery Court we find to be without merit. The Board has paramount initial jurisdiction over the subject matter herein; nor was the Board a party to the injunction proceeding before the Chancery Court. Furthermore, the present proceeding is not one to adjudicate private rights, but is a proceeding to effectuate the public policy set forth in the National Labor Relations Act, as amended." (O-16-7)

676

14. The Respondent excepts to the conclusion of law "The Board likewise finds without merit the Respondent's contention that the employees were not entitled to reinstatement, because they had not given 8 hours notice of intention to return to work in accordance with the provisions of the contract which required such notice after unauthorized absence not due to injury or illness. We do not believe that such a provision is applicable to the particular circumstances of a strike situation and a request for reinstatement, such as present in this case." (O-16-17)

15. The Respondent excepts to the conclusion of law "Under the principle of United Packinghouse Workers of America (Wilson and Co., Inc.), 89 NLRB 310, the re-

quirements of Section 8 (d) of the Act have been met, and the Board, accordingly, rejects the Respondent's contention that the Union has failed to comply with Section 8 (d)." (O-16-31)

16. Respondent excepts to the conclusion of law "In the present case, it is our opinion that the Respondent was not justified in refusing to reinstate the strikers until the Union signed a contract with a one year no-strike clause and for a fixed one year term without an automatic renewal clause." (O-18-13)

17. Respondent excepts to the conclusion of law "Even if, as contended by the Respondent, the request were made subject to continuation of negotiations and the terms of the existing contract, which had not been terminated, such 'condition' would not be objectionable as it asks only that the Respondent do that which it was legally bound to do and to return to the situation which existed at the time the strike began." (O-18-21)

18. The Respondent excepts to the conclusion of law "In our opinion, however, under the circumstances of this case the Respondent has not proved a case of misconduct by the Union, delinquency by the employees in their

677

obligations to the Respondent, or undue hardship to the Respondent. We are aware, of course, that almost all, if not all, strike situations cause some detriment of various kinds to the parties involved, but, in our opinion, that alone is not sufficient to deny to the strikers their statutory right to reinstatement under the conditions of this case." (O-19-10)

19. The Respondent excepts to the conclusion of mixed law and fact, "The damage to the Respondent's equipment and the probability of damage appear to be comparatively negligible in relation to the value of the plant, the large volume of business done by the Respondent, the loss of sales to customers during a complete shut down, and the damage to equipment possible during full

normal operation of the plant when there is no strike."
(O-19-17)

20. The Respondent excepts to the conclusion of law "On June 21, 1952, and the following days, the Respondent individually interviewed striking employees and reinstated them upon their assurance that they would not strike. This was done at a time when the Respondent unlawfully rejected the Union's attempts to get the employees back to work and when the Respondent declined to deal with the Union on grievances. In our opinion this conduct constitutes discrimination violative of the Act, as it required the employees, as a condition of employment, to give up their adherence to the Union as their bargaining representative in this respect and to return as individuals after personal interviews and not as a group." (O-21-11)

21. The Respondent excepts to the conclusion of law "In the circumstances of this case we find, therefore, that the Respondent violated Section 8 (a) (3) and (1) of the Act by discriminatorily refusing to reinstate the employees listed in the complaint and by individually interviewing the strikers and reinstating them upon their assurance that they would not strike at a time

678

when the Respondent rejected the Union's attempts to get the strikers back to work and declined to deal with the Union on grievances." (O-21-21)

Exceptions to the failure of the Panel to find facts pertinent to the issues as to whether the Respondent's refusal to reinstate employees here involved on and after June 21, 1952, was discriminatory.

22. The Respondent excepts to the Panel's failure to find as a fact that the strike here involved was called by Oil Workers International Union, C.I.O., as the exclusive bargaining agent of the employees of the Respondent here involved. (R-130-16)

23. The Respondent excepts to the Panel's failure to find as a fact that the strike here involved was called by

Oil Workers International Union, C.I.O., as a part of the nation wide strike in the oil industry called by that Union. (R-130-20)

24. Respondent excepts to the failure of the Panel to find as a fact that on the 3rd or 4th of June, 1952, John Henry Young, a member of the bargaining committee representing the Union in bargaining with the Respondent concerning the issues involved in the strike here involved, came to a meeting between the bargaining committee and the international representative representing the Union and representatives of the Company playing with a yo-yo. (R-336-18)

25. The Respondent excepts to the Panel's failure to find as a fact that when, on each of three separate occasions, on the fourth and fifth days of June, 1952, E. P. Shelton appeared at the plant gate with a group of strikers and stated that the group then present reported to go to work, Shelton was acting as an international representative of Oil Workers International Union, C.I.O. (R-128-1)

679.

26. The Respondent excepts to the Panel's failure to find as a fact that on Friday, June 20, 1952, 260 employees of the Respondent, employed at the chemical plant here involved in maintaining the plant, had agreed with the Respondent to return to work at that plant on the morning of Monday, June 23, 1952, and the Panel's failure to find that those employees normally did not work on Saturday and Sunday. (R-463-1)

27. The Respondent excepts to the Panel's failure to find as a fact that the Union, on June 21, 1952, when it offered to cause the employees involved in the strike to return to work, or at any time thereafter, did not agree that the striking employees represented by it would work at the plant for any stated period of time if the Respondent would permit them to return to work at the plant. (R-133-14) (R-141-22)

28. The Respondent excepts to the Panel's failure to find as a fact that the Respondent had reasonable grounds

to believe that if, as the Union requested, the striking employees represented by the Union were permitted to return to work those employees would soon thereafter again strike for the purpose of disrupting the Respondent's operation of the portion of the plant that the Respondent was at all times between April 30, 1952, and August 4, 1952, operating.

29. The Respondent excepts to the Panel's failure to find that each offer of the Union, made on June 21, 1952, or thereafter, to cause the striking employees represented by it to return to work at the plant, was made upon condition that the Respondent continue to negotiate with the Union thereafter toward a settlement of the issues from time to time in dispute between the Respondent and the Union, and to the Panel's failure to find that if the Respondent had permitted the striking employees to return to work under that condition the Union would have held over the head of the Respondent while the men

680

were working a threat of another strike by the employees involved, to strengthen the bargaining position of the Union with respect to such issues in dispute.

30. The Respondent excepts to the failure of the Panel to find as a fact that the Union continuously contended, from June 30, 1952, until a new contract between the Respondent and the Union was executed on August 3, 1952, that the employees working for it at the plant here involved had a right to strike at any time, without giving the Respondent sixty days notice of the Union's election to terminate the contract existing between the Respondent and the Union.

31. The Respondent excepts to the Panel's failure to find as a matter of law that the Respondent had the right to lock out the striking employees represented by the Union, for the purpose of strengthening the Respondent's bargaining position with the Union as a corollary to the Union's right to strike to strengthen its bargaining position.

32. The Respondent excepts to the Panel's failure to find as a fact that Mr. Smith, Director of Personnel, and an attorney for the Respondent, visited the General Counsel of Oil Workers International Union, C. I. O., in Denver Colorado, in February, 1952, and attempted, through him, to persuade the Union that the employees of Respondent here involved had no legal right to strike until the contract between the Respondent and the Union had been terminated by notice from the Union to the Respondent to that effect, given sixty days prior to the date fixed as the effective date of the termination, and that the General Counsel of the Union stated the position of the Union to be that it had the legal right to call a strike of the men here involved at any time without giving such notice.

681

33. The Respondent excepts to the Panel's failure to find that the Trustee for the Missouri Pacific Railroad Company, the sole railroad carrier serving the plant, sent crews and equipment into the plant on May 9, May 14, and May 19, 1952, to take tank car shipments from the plant. There was no further railroad service to the plant until May 31, at which time the United States District Court for the Western District of Arkansas served a restraining order on Oil Workers International Union, C. I. O. and International Association of Machinists, who were picketing the railroad track at that time, enjoining them from interfering with the railroad employees going into the plant with equipment to take tank car shipments therefrom. (R-459-14)

Exceptions to Findings of Facts contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, under the heading "C. THE REFUSAL TO BARGAIN." (O-21-28)

34. The Respondent excepts to the Finding of Fact "On August 24, 1951, the Union, under the terms of the contract in existence at that time, notified the Respondent that it desired to modify the agreement and specified 34

provisions of the contract which it desired to amend." (O-21-31)

35. The Respondent excepts to the Finding of Fact "Accordingly, we find that at the meeting of July 16, 1952, Meinert conditioned the signing of a contract upon the withdrawal by the Union of unfair labor practice charges pending before the Board." (O-30-12)

36. The Respondent excepts to the Finding of Fact "Although during the negotiations the Respondent contended that the contract in effect at the time of the strike, April 30, 1952, was no longer in effect, in its answer to the complaint in this case, the Respondent has alleged that the contract was in full

682

force and effect for the entire period of June 21, 1952, through August 3, 1952." (O-31-20)

37. The Respondent excepts to the Finding of Fact "The Respondent also informed the Union that, although it would not consider the grievances of the employees, if presented by the Union, it would entertain grievances from individual employees." (O-34-23)

38. The Respondent excepts to the Finding of Fact "The record is equally clear that the Respondent made the withdrawal of the unfair labor practice charges a condition precedent to the signing of an agreement." (O-34-29)

Exceptions to Conclusions of Law contained in the Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, under the heading "C. THE REFUSAL TO BARGAIN." (O-21-28)

39. Respondent excepts to the Conclusion of Law "The Board does, however, find violations of Section (a) (5) in (1) the Respondent's dealing with individual strikers at a time when the Union had abandoned the strike by offering the unconditional return to work of the strikers, and the Respondent had refused to deal with the Union on the matter; (2) the Respondent's conditioning of the sign-

ing of an agreement upon the withdrawal of the unfair labor practice charges in this case; and (3) the Respondent's refusal to recognize that the contract was in effect, not having been terminated, and to permit the Union to administer it during the strike." (O-34-7)

40. The Respondent excepts to the Conclusion of Law "We view this conduct as bypassing the Union, in derogation of the Union's status, as exclusive bargaining representative, and thus it constitutes a refusal to bargain in violation of the Act." (O-34-25)

41. The Respondent excepts to the Conclusion of Law "The initiation of unfair labor practice proceedings does not suspend the operation of the Act;

683

nor does it relieve the respondent of the duty to bargain. As the Court of Appeals for the Fourth Circuit declared in Hartsell Mills, the respondent, 'could not thus make its compliance with the Act dependent upon dismissal of charges that it had been guilty of violating it.' We, therefore, in accordance with well established policy (see American Laundry Machinery Company) 76 NLRB 981, The Toledo Desk & Fixture Company, 75 NLRB 744, and Hartsell Mills Company, 18 NLRB 268, enf'd. as modified, in 111 F. 2d, C. A.-4) find that this conduct also violated Section 8 (a) (5) of the Act." (O-34-31)

42. The Respondent excepts to the Conclusion of Law "It is true that the Board will not find a violation of a contract to be an unfair labor practice. The Board's reasons for that policy are given in United Packinghouse Workers of America (Wilson & Co., Inc.), 89 NLRB 310 at 317. We, however, do not view the Respondent's conduct in this respect as a mere breach of contract; it goes to the fundamental concept of the Union's status as bargaining representative of the Respondent's employees. Under the circumstances of this case, the Respondent had a statutory obligation to recognize the Union as the exclusive bargain-

ing representative, and to permit the Union to function as such. To deny the Union recognition as the exclusive agent under the contract and to frustrate its performance as such bargaining agent constitutes, in our opinion, a failure by the Respondent to fulfill its statutory duty to bargain under Section 8 (a) (5) of the Act." (O-35-17)

43. The Respondent excepts to the Conclusion of Law "We also find that, as the Respondent's conduct constituted a failure to bargain, it thereby interfered with, restrained, and coerced the Respondent's employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8 (a) (1)." (O-35-29)

684

Exceptions to Findings of Fact and Conclusions of Law contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order; under the heading "V. The Remedy." (O-37-1)

44. The Respondent excepts to each Finding of Fact, and each Conclusion of Law, stated in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, issued in this case on July 30, 1953, under the heading "V. The Remedy." (O-37-1)

Exceptions to the Conclusions of Law stated in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, under the heading "Conclusions of Law." (O-37-27)

45. The Respondent excepts to the Conclusion of Law "2. By discriminating in regard to the hire and tenure of employment of the employees who went out on strike on April 30, 1952, whose names are listed in the complaint herein, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act." (O-37-30)

46. The Respondent excepts to the Conclusion of Law "5. By refusal to bargain collectively with Oil Workers

International Union, CIO, as the exclusive representative of the employees in the appropriate unit, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act." (O-38-14)

47. The Respondent excepts to the Conclusion of Law "6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act." (O-38-18)

48. The Respondent excepts to the Conclusion of Law "7. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act." (O-38-22).

685

49. The Respondent excepts to the Order contained in the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, under the heading "Order" (O-38-24) and every part thereof, with the exception of the last three lines thereof, which last three lines begin on the sixth line on page 40 of the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order issued in this case on July 30, 1953.

Respectfully submitted,

Lion Oil Company
By Jeff. Davis
Attorney

686

Decision and Order

On July 30, 1953, a majority of a Panel of the Board issued Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order in the above-entitled case, finding that the Respondent had engaged in certain unfair labor practices and ordering that it cease and desist therefrom and take certain affirmative action as set forth in the Proposed Findings, Conclusions, and Order, attached hereto. Thereafter the Respondent filed exceptions to the Proposed Findings, Conclusions, and Order, a supporting brief, and a request for oral argument. On September 24, 1953, at Washington, D. C., the Board heard oral argument in which the Respondent, the charging Union, and the General Counsel participated.

Thereafter, in the light of the exceptions, brief, and oral argument, the Board has reviewed the Proposed Findings, Conclusions, and Order and only insofar as they are consistent with this Decision and Order hereby adopts the Panel's Proposed Findings, Conclusions, and Order.

1. The first issue that must be decided in this case involves interpretation of the notice provisions of Section 8 (d) of the Act. The Respondent contends that the Union failed to observe the waiting requirements of that Section before striking to enforce its demands, and that by such conduct it removed the striking employees from the protection of the Act. We do not agree.

687

The pertinent facts are not in dispute. In 1950 the Respondent and the Union entered into a collective bargaining contract which by its terms was to remain in effect until October 23, 1951, and was to continue in force thereafter for an indefinite period, subject to cancellation on notice by either party. Specifically, the duration clause permitted 60 days' notice to amend on or after August 24, 1951, and if the parties did not agree on a new contract

after that period, a further 60 days' notice to terminate the contract completely.¹

On August 24, 1951, the Union notified the Respondent and the Federal Mediation and Conciliation Service of its desire to amend the contract and of the existence of a labor dispute, and sent a copy of its letter to the State Labor Commissioner for the State of Arkansas. Negotiations on modification of the contract began on August 29, 1951. On February 14, 1952, the employees voted to strike and notified the Respondent. The strike, after several postponements, occurred on April 30, 1952. On June 21, 1952, the employees offered to return to work, and the Respondent refused to reinstate them. A new contract

688

and a strike settlement were executed on August 3, 1952, and on August 4, the strikers began to return to work.

The August 24, 1951, notices of the existence of a labor dispute were adequate in content and destination to meet the formal requirements of Section 8 (d), and we so find.

¹"This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until cancelled in the manner hereinafter in this Article provided.

"This agreement may be cancelled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

"(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

"(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

The issue then is whether the Union's resort to economic action was so timed with respect to the notices as to satisfy the waiting period set out in the Section. Because of the importance of this issue and because the Section since its enactment has so seldom required construction by the Board, we deem some general comment on its meaning advisable. The pertinent language of the Section is set out below.²

The fundamental purpose of the Section is to assure that, once parties have stabilized their bargaining relationship by entering into a

²Section 8 (d)

... Where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such a termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:


... Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of Sections 8, 9 and 10 of this Act, as amended, ...

contract, the stability achieved will not be placed in jeopardy by strikes or lockouts. It is for this reason that the Section provides for a waiting period before strike or lockout action by the parties. Clearly, Congress was interested in establishing an orderly procedure for contract negotiations and in preventing the industrial unrest that is the natural consequence of the failure of parties to abide by their collective bargaining agreements.³

With the Congressional purpose as a background, we advert to the language itself of Section 8 (d). It is to be noted that the initial phrase of the notice provisions contained in the Section, which necessarily applies to all the following sub-divisions, reads: "Where there is in effect a collective bargaining contract covering employees . . . no party . . . shall terminate or modify such contract, unless . . ." Thus, the plain wording of the Section makes the required notices mandatory at all times when collective bargaining agreements are in effect, not only when a party desires to terminate but equally when a party seeks to modify a contract.⁴ It is argued that the notice provi-

³It is evident from the legislative history of the 1947 amendments to the Act, which include Section 8 (d), that Congress was generally concerned with promoting industrial peace by having parties adhere to collective bargaining agreements. Thus, the Senate Committee on Labor and Public Welfare in its report among other things said: "Statutory recognition of the collective agreement as a valid and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties of such agreements, and will thereby promote industrial peace." S. Rep. No. 105 on S. 1126, p. 17.

⁴Senator Ball, a proponent of Section 8 (d), said: "The provision . . . provided that where a contract between a union and an employer is in existence, fulfilling the obligation on both sides to bargain collectively means giving at least 60 days' notice of the termination of the contract, or of the desire for any change in it, is another provision aimed primarily at protecting the public, as well as the employee, who have been the victims of 'quickie' strikes." (emphasis supplied) Cong. Rec., May 12, 1947, p. 5146.



sions of the Section are applicable only when a contract is about to end. It would be futile, however, in

690

our opinion, to require a waiting period for strikes and lockouts only at a time when the parties are already on notice, by virtue of their own agreement, of the imminence of termination. That such limited view could not have been the Congressional intent is not only shown by the plain and unambiguous language set out above, but also by the fact that there is no logical distinction—in the perspective of the Congressional objective of promoting industrial peace—between one period of a contract and another. Certainly it is as desirable to discourage interruptions to the free flow of commerce arising from labor disputes during the life of a bargaining agreement as at or near its termination.

Turning now to the situation presented by the instant case, the critical provision is 8 (d) (4), which provides that the employer and union shall continue in effect the existing contract, without resorting to strike or lockout for “sixty days after such notice is given or until the expiration date, whichever occurs later” (emphasis supplied). It is urged that, despite the plain wording of the statute, Congress intended that 60 days constitute the maximum waiting period before strike or lockout. We are unable to agree. If that had been the intent, there would have been no point in Congress inserting in 8 (d) (4) the phrase “until the expiration date” or the additional phrase “whichever occurs later.” The language of 8 (d) (4) is not ambiguous and cannot be amended or rewritten by administrative interpretation. Moreover, if resort be had to legislative history, it appears that Senator Taft, the co-author of the Act, made it clear that 8 (d) (4) requires a waiting period before strike or lockout during the life of a contract when he said: “If such notice is given, the bill provides for no waiting period except during the life of the contract itself.”⁵

⁵Cong. Rec., April 23, 1947, p. 3952. The Senate Minority Report, in objections to Section 8 (d) stated: “Since not every

Our primary problem, it seems to us, therefore, is to ascertain what Congress meant by "expiration date" in this context. Once this is determined as applied to the various types of contracts in use in the labor field, our task is greatly simplified; since we then have discovered a fixed pole against which to measure the waiting period. That is to say that the application of Section 8 (d) (4) then becomes a matter of simple arithmetic. If the notice is given more than 60 days before the expiration date, the expiration date becomes the critical date prior to which no strike or lockout is lawful; likewise, if the notice is given less than 60 days before the expiration date, then the 60-day period extending beyond the expiration date is controlling.

If Section 8 (d) is considered both in the framework of industrial reality⁶ and in the perspective of the Congressional purpose to protect the stability of collective bargaining agreements against strikes and lockouts during the life of the contract, it becomes clear that Congress used the term "expiration date" to signify the date in the course of a labor contract when the contract, by its own terms, is subject to either modification or termination, regardless

collective bargaining contract contains a no-strike clause, the effect of the proposal is to incorporate such provisions by legislative fiat." S. Min. Rep. No. 105, Pt. 2, on S. 1126, p. 22. It is significant that notwithstanding this contention, the section was passed by Congress in its present form.

⁶For example, the Board with Court approval has held that with respect to Section 8 (d) notice of intention to modify a bargaining contract in substantial respects is the equivalent of notice to terminate. J. W. Woodruff, Sr. d/ba/ Atlanta Broadcasting Company, 90 NLRB 808, 811, enforced 193 F. 2d 641 (C. A. 5); Great Bear Logging Company, 59 NLRB 701, 703; American Woolen Company, 57 NLRB 647, 649; Atlas Felt Products Company, 68 NLRB 1, 3; William Barnett & Son, Inc., 74 NLRB 81, 82, 83. Accord: Moran Shoe Co. and United Shoe Workers, Local 200-A, 2 Amer. Labor Arbitration Awards, 67, 880 (Sept. 25, 1947); Anderson v. Tuomi, et al., 230 Minn. 490, 42 N. W. 2d 204.

of whether notice is required explicitly by the agreement. The term "expiration date" as used in Section 8 (d) (4) thus has a twofold meaning; it connotes not only the terminal date of a bargaining contract, but also an agreed date in the course of its existence when the parties can effect changes in its provisions.

Under this view, the expiration date of a fixed term contract with no provisions for reopening is the actual terminal date. In this connection,

692

we do not say that Congress intended by Section 8 (d) to convert contracts for fixed terms into contracts at will, terminable on 60 days' notice. The "expiration date" of a contract containing an "automatic renewal clause — i. e., an agreement subject to modification or termination upon notice at fixed annual periods — is the earliest date on which modification or termination could be effective. We think the same rule applies to a contract for a fixed term providing for a wage reopening at a prescribed period. Similarly, in contracts of indefinite duration, which are rare in labor relations, the 60 day notice to modify or terminate would fix the period during which lockouts and strikes are proscribed.

Our dissenting Member, Mr. Murdock, characterizes this interpretation of the Statute as reading a no-strike clause into every contract. This characterization misapprehends the purport of our decision. Our interpretation preserves the right to strike in all circumstances where the parties ~~have provided in their agreement for negotiating substantial changes in its provisions~~ — if the statutory requirements of Section 8 (d) are met. Moreover, our decision has no bearing on the right to strike for reasons and purposes other than to obtain contract modification or termination. We say only that strikes to alter the provisions of a firm contract of fixed duration, and containing no provision for modification, must await the termination date. Member Murdock's interpretation of Section 8 (d) destroys, in our opinion, the obligation of the parties to abide by the terms of a collective bargaining

agreement. For he would permit strikes and lockouts to force changes in the terms of a bargaining agreement at any time during its lifetime, rather than only at such time as was contemplated by the parties when they entered into the agreement. In fine, Member Murdock's interpretation defeats the Congressional purpose of promoting stability in bargaining relationships.

Our holding, moreover, supports the prime objective of the Act as

693

a whole, to encourage the "practices and procedures of collective bargaining". It has been stated too often to bear repetition that the ultimate achievement of collective bargaining is the contract itself. If, as we believe, Congress, in the 1947 Amendments to the Act, deemed it wise through Section 8 (d) to insist upon adherence to fixed contracts voluntarily negotiated and executed, its step only furthered the basic purpose of the Act itself. Nor, in the light of experience, is our construction inconsistent with the actualities of industrial life. Contracts for fixed periods are not made to be broken. That the intention to be bound by the established expiration date is ever present during negotiations is conclusively evidenced by the stress always placed in contract negotiations on wage reopening — or other modification — clauses. These clauses, now almost universal in bargaining contracts exceeding one year in duration, are in effect qualifying reservations of the privilege to economic action at dates earlier than the final terminal day.⁷

On this point, we feel that we should comment on the critical significance which Member Murdock attaches to the differences between contractually provided notices to

⁷In discussing the union's duty to bargain as set out in Section 8 (b), (3), and 8 (d) of the 1947 Amendments, Senator Morse said: "A contract has been signed, and I take the position this afternoon, as I have taken the position in many cases, that the union, once it signs a contract has no right to strike during the life of the contract if the strike is to force a change in the terms of the contract."

modify and notices to terminate.⁸ The inconsistency between such a view and the salutary purposes of the entire Section is especially illustrated by this very case. Thus, under Member Murdock's interpretation, we take it that the Union was free to strike without giving any notice whatsoever in August, 1951, since this was presumably not "around the expiration date of the contract." This is apparently so for

694

the reason that the contract had no fixed expiration date. However, our colleague would further hold that, having given notice to modify, the Union by its own action in seeking to comply with 8 (d) (at a time when he thinks it was not required by 8 (d) to do so) created an obligation to give a second notice and then await the final termination of the agreement before it could lawfully strike. In short, the Union, under his interpretation, could have struck without any notice in August, but, by virtue of giving the notice, and having exhausted all the mediating and negotiating requirements of Section 8 (d) could not lawfully strike the following April.

We cannot accept this proposition. In our opinion, (1) this view would encourage resort to "quickie" strikes and lockouts in the middle of a contract term, (2) it would encourage the termination of contracts as opposed to their modification, and (3) it would penalize a union which withholds strike action for a protracted period in an effort to reach agreement rather than merely observing the minimum waiting period provided in the Statute. We are certain that Congress did not intend that Section 8 (d) should have such unsettling results.

It suffices for our decision here that the contract specifically provided for modification and that the earliest date on which modification could be made effective was October 23, 1951. The notice was given precisely 60 days

⁸As noted above, the Board has repeatedly refused to distinguish between notice to modify and notice to terminate, considering them for the purposes of Section 8 (d) one and the same thing.

before that date. As the notice was served on August 24, the end of the 60 days statutory period and the date fixed in the contract for making modifications (which, as indicated above, we consider tantamount to "expiration" as that term is used in Section 8 (d) (4)) coincided.⁹ Thus, the Union, before striking to enforce its economic demands satisfied the statutory requirements, and consequently the striking employees never lost the protection accorded economic strikers by the Act.

695

Our decision in this case is not inconsistent, we believe, with the interpretation which the Court of Appeals for the Eighth Circuit placed upon Section 8 (d) in its opinion in the Wilson case. Local No. 3, United Packinghouse Workers of America, CIO, v. National Labor Relations Board, 210 F. 2d 325, 331-333. In that case, a strike was called more than 60 days after the giving of notices of the kind required by Section 8 (d), but before the expiration date of a contract between the Company and the Union. A majority of the Board in the Wilson case had concluded that Section 8 (d) prohibits a strike to secure modification or termination of a contract only for a period limited to 60 days after the notices required by the Section have been given, and had held that the strike in question did not contravene the Section because the 60 day waiting period had been satisfied. The Court of Appeals believed, however, that the strike contravened Section 8 (d) because it occurred before the expiration date of the bargaining contract. Because of the basis on which the Board decided the Wilson case, the construction of 8 (d) which we adopt here was not presented by the Board to the Court. Leaving aside the effect of the wage reopener, we agree with the view of the Court of Appeals consistent with the opinions expressed herein, that the 60-day notice period is not the maximum waiting period. Subject to the construction which we have given to Section 8 (d) here, we

⁹See American Lawn Mower Company, 108 NLRB No. 215.

adopt the view that the waiting period extends until the "expiration date" of the contract.

In this case, it is clear that the statutory waiting period has here been satisfied since the strike herein occurred after the "expiration date" of the parties' agreement had passed.

696

2. A majority of the Panel of the Board in the Proposed Findings, Conclusions of Law, and Order found that the Respondent had violated Sections 8 (a) (3) and 8 (a) (1) by certain conduct. We agree that the Respondent has violated these sections of the Act for the following reasons:

During contract negotiations, on April 29, 1952, the Respondent informed the Union that it wanted a no-strike clause in the contract. Subsequently, at other meetings, the Respondent stated that it would not sign an agreement which did not contain a no-strike clause and a termination clause which did not provide for automatic renewal. The Union was informed by the Respondent on June 20, 1952, that the strikers had not been replaced. On June 21, 1952, the Union unconditionally offered to return the employees to work. The Respondent replied that it would not permit the employees to return until a new agreement had been reached which included a no-strike clause and the termination clause which it wanted. After the offer to return to work was rejected, the Union requested a meeting on grievances to present the employees' claims to 2 weeks pay in lieu of notice of layoff under the old contract. The Respondent refused to entertain any grievances.

(On June 23, 1952, the Union repeated its offer to have the employees return to work. On the same date the Respondent sent a letter to the Union and mailed copies to the strikers at their homes. The Respondent's letter stated (Details are set forth in the Proposed Findings) that it would not settle the dispute until the employees represented by the Union agreed not to strike for a 1-year period.

The Respondent on June 21, 1952, and subsequently, refused to permit the employees to return in a group and on June 23, 1952, notified the strikers that they could not return until the Union had signed a contract providing for agreement not to strike for 1 year. On June 21, 1952, and for several days, many employees, individually and in groups, made

697

offers to return to work. As stated in the Proposed Findings, they were informed that they would have to speak to the plant superintendent who in many cases was not available. During this time, however, certain employees were permitted to go to work after they had been individually interviewed by the plant superintendent upon the agreement and under the condition that they would remain at work. Significantly, the Respondent resumed operations in its sulphuric acid section on June 25, 1952, and in the ammonium sulphate section on June 26, 1952, both of which had been shut down during the strike.

Thus, on June 21, 1952, and the following days, the Respondent interviewed individual strikers and reinstated them upon their assurance that they would not strike. At the same time the Respondent refused the Union's offer to have the strikers return until, among other things, the Union agreed to a no-strike clause for a 1-year period, a condition which the Union was resisting. This position of the Respondent was communicated to all the strikers by the Respondent's letter. As this conduct required employees, as a condition of employment, to give up their adherence to the Union as their bargaining representative in this respect and to return after personal interview as individuals, and not as a group, it constituted discrimination, coercion, restraint, and interference violative of the Act, as to the strikers who continued to adhere to the lawful bargaining position of their statutory representative.

In the circumstances of this case, therefore, we find that the Respondent violated Section 8 (a) (3) and (1) of the Act by discriminatorily refusing to reinstate the employees listed in the complaint, as it rejected the Union's

attempts to get the strikers back to work, but at the same time individually interviewed the strikers and reinstated them upon their assurance that they would not strike.

698

3. A majority of the Panel also found that the Respondent had violated Section 8 (a) (5), and thereby Section 8 (a) (1), of the Act by certain conduct set forth in detail in the Proposed Findings, Conclusions, and Order. We agree with the Panel's conclusions in this respect, but we do not adopt all the grounds upon which the Panel based its proposed conclusion. We find, however, for the reasons stated in the Proposed Findings, Conclusions, and Order that the Respondent violated Sections 8 (a) (5) and 8 (a) (1) by (1) dealing with the individual strikers at a time when it refused to deal with the Union on the return to work of the employees, following the Union's abandonment of the strike by its unconditional offer to return the strikers; and (2) by making the withdrawal of unfair labor practice charges a condition precedent to the signing of a contract.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lion Oil Company, El Dorado, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Oil Workers International Union, CIO, or in any labor organization, by discharging, or refusing to reinstate, any of its employees, or by discriminating in any other manner with regard to their hire, tenure of employment, or any term or condition of employment;

(b) Refusing to bargain collectively with Oil Workers International Union, CIO, as the exclusive representative of the employees in the unit, herein found to be appropriate;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization,

699

to form labor organizations, to join any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole the employees who went out on strike on April 30, 1952, and who are listed in the complaint herein for a loss of pay they may have suffered by reason of Respondent's discrimination against them, in the manner set forth in the section entitled "The Remedy" in the attached Proposed Findings;

(b) Post at its plant in El Dorado, Arkansas, copies of the notice attached hereto, marked "Appendix A."¹⁰ Copies of such notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by Respondent's representative, be posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

¹⁰If this Order is enforced by a decree of a United States Court of Appeals the attached notice shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" in the caption, the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

(c) Notify the Regional Director for the Fifteenth Region, in writing, within ten (10) days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent discriminated

700

against its employees in violation of Section 8 (a) (4) of the Act.

Dated, Washington, D. C. Aug 5 1954

	Guy Farmer,	Chairman
	Philip Ray Rodgers,	Member
	Albert C. Beeson,	Member
(Seal)	National Labor Relations Board	

701

IVAR H. PETERSON, MEMBER, Concurring:

I agree with Chairman Farmer and Members Rodgers and Beeson in their ultimate findings that the Union complied with the applicable terms of Section 8 (d) of the Act and that the Respondent violated Section 8 (a) (1), (3) and (5) of the Act. However, in my view they adopt an artificial interpretation of the provision in paragraph (4) of Section 8 (d), which requires maintenance of the contractual terms and conditions, without resort to strike or lockout, "for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later."

It seems apparent to me that the prime purpose of Congress in enacting Section 8 (d) was to prevent "quickie" strikes or precipitate lockouts designed to secure the modification or termination of collective bargaining agreements. To accomplish this purpose, Congress established a mandatory 60-day "cooling off" period during which either party to a labor agreement is forbidden to resort to economic action to enforce its demands for

modification or termination of the contract. In my opinion, the duty to maintain the contractual status quo for 60 days attaches whenever the parties enter into negotiations to modify or terminate a contract. That was the reasoning of the Board majority in the Wilson case,¹¹ and I would adhere to it.

By giving the term "expiration date" a specialized meaning, for which I find no warrant in the Act or its legislative history, my colleagues in the majority establish a "fixed pole" against which the waiting period is to be calculated or measured. They say "expiration date" means "the date in the course of a labor contract when the contract, by its own terms, is subject to either modification or termination." They then hold that if a notice is given more than 60 days before the expiration date, as they define the term, the obligation to refrain from economic action continues until the expiration date is reached. Thus, the "cooling off" period is enlarged beyond 60 days, and the effect is to hold strikes occurring more than 60 days after notice but before the contract expiration date to be unfair labor practices. But Congress in Section 13 stated that nothing in the Act, "except as specifically provided for herein, shall be construed so as to

702

interfere with or impede or diminish in any way the right to strike. Moreover, it seems to me that Section 8 (d) itself, in stating that an employee loses his employee status if he "engages in a strike within the sixty-day period specified in this subsection," indicates that Congress intended the "cooling off" period to be only 60 days in duration rather than a flexible period of 60 or more days depending on the time interval between the date notice is given and the contract "expires." Therefore, I do not think the Board would be warranted in interpreting Section 8 (d) so as to impair the right to strike for periods in excess of 60 days following the giving of notice.

I readily concede that my construction of paragraph (4) of Section 8 (d) does not give full effect to its literal

¹¹89 NLRB 310.

language. As written, and viewed in isolation, that paragraph appears to require the maintenance of the contractual status quo until the expiration date of the contract — even though notice was given more than 60 days earlier — if the expiration date “occurs later” than the end of the 60-day period calculated from the date notice was given. But I think the result which follows from such a literal interpretation operates to write into many labor contracts a no-strike clause of substantially longer duration than 60 days, contrary to the intention of Congress, as expressed in the other paragraphs of this section, and elsewhere. I think such an extension of the statutory limitation on the right to strike can be avoided by construing the phrase “whichever occurs later” as having specific reference to a situation in which notice of desire to modify or terminate was given less than 60 days before the termination date of the contract. I believe Congress wished to make clear that in such a case the 60-day “cooling off” period should be observed before economic action could be taken, even though it extended beyond the end of the contract. As pointed out by Senator Taft (Cong. Rec., April 23, 1947, p. 3955), if a party “waits, let us say, until 30 days before the end of the contract to give the notice, then there is a waiting period provided during which the strike is an unlawful labor practice for 60 days from that time, or to the end of the contract and 30 days beyond that time.”

Applying my view of Section 8 (d) to the facts of this case, I would hold that the notice of desire to amend given by the Union on August 24, 1951,

703

was adequate to meet the requirements of Section 8 (d). As the strike in support of this demand did not occur until April 30, 1952, 8 months after the giving of notice, there can be no question that the Union fully met the 60-day waiting period. Therefore, the strikers did not lose their status as employees, but on the contrary were entitled to the protection of the Act.

In addition to the reasons set forth in the main opinion, I would find that the Respondent's refusal to recog-

nize the continuing existence of the contract and its refusal to permit the Union to administer it during the strike, are further grounds for finding that the Respondent violated Section 8 (a) (5) of the Act.

Dated, Washington, D. C. Aug 5 1954

Ivar H. Peterson, Member
National Labor Relations Board

704

ABE MURDOCK, MEMBER, dissenting:

I cannot agree with my colleagues in their interpretation of Section 8 (d) of the Act. In view of my interpretation of that section, the Union did not comply with it, and I am led to the ultimate conclusion that the complaint should be dismissed in its entirety.

In 1950 the Respondent and the Union executed a contract containing the following provisions with respect to the duration of the agreement.

Article I

"This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

"This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

"(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

"(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

The contract did not contain a no-strike clause.)

On August 24, 1951, the Union notified the Respondent and the Federal Mediation and Conciliation Service of its desire to amend the contract and of the existence of a labor dispute, and sent a copy of its letter to the State Labor Commissioner for the State of Arkansas. Negotiations on modifications of the contract began on August 29, 1951. On February 14, 1952, the employees voted to strike and notified the Respondent. The strike, after several postponements, occurred on April 30, 1952. On June 21, 1952, the employees offered to return to

705

work, and the Respondent refused to reinstate them. A new contract and a strike settlement were executed on August 3, 1952, and on August 4 the strikers began to return to work.

On April 30, 1952, the date of the strike, the contract was in "full force and effect." With this finding the parties are in agreement. According to the provisions of the contract, it became one with no specific expiration date after October 23, 1951, unless canceled in the manner provided for in the contract. The method of termination is clearly defined in the contract. Either party desiring to amend the contract was to give such notice not earlier than August 24, 1951, sixty days before October 23, 1951. If agreement on modification was not reached within the 60-day period, the contract became one terminable upon the giving of 60-day notice of termination by either party. The record discloses that neither party gave the notice to terminate provided for by the contract, and thus it con-

tinued in effect up to August 3, 1952, when a new contract was executed.

Section 8 (d) of the Act not only provides certain standards by which the Board must determine whether employers and labor organizations have fulfilled their duties to bargain collectively under the Act, but it also provides for the loss of employee status, for the purpose of the Act, to those employees covered by a contract who strike under certain conditions. The relevant portions of Section 8 (d) pertinent to a situation where a contract is in existence are as follows:

"... Where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such a termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

706

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and con-

ditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

"... Any employee who engages in a strike within the sixty day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of Sections 8, 9, and 10 of this Act, as amended. . . ."

The proviso of Section 8 (d), in my opinion, applies only to the period around the expiration date of a contract and does not apply earlier during the term of a contract. The proviso enumerates the duties of contracting parties when they seek to terminate, renew, or renegotiate a contract for a fixed period upon the expiration of its term or when they seek to terminate or modify a contract of indefinite duration; it does not define the obligations of contracting parties with respect to changing the provisions of a contract during its term. The proviso only directs and encourages the bargaining efforts of parties to a contract during the crucial period when an existing contract is about to expire and negotiations for a succeeding contract are appropriate.

Section 8 (d) describes the action which employers and labor organizations must take to fulfill the duty to bargain required by the Act. The proviso to the section imposes additional obligations upon the parties where there is in effect a collective bargaining contract, and certain procedural requirements are outlined in paragraphs (1), (2), (3) and (4).

The language used throughout the proviso limits the application of the procedure set forth therein to termination or modification of a contract at its expiration date. Thus paragraph (1) of the proviso clearly says that a party desiring termination or modification of an existing contract shall serve a written notice of the proposed change "sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification." [Emphasis supplied.]

It does not say that 60 day' notice must be given whenever a party wants to negotiate changes in a contract, but that notice must be given only at a particular time—immediately preceding the expiration date of the contract, or, if the contract has no expiration date, then 60 days prior to the proposed termination or modification. The latter provision obviously covers contracts of indefinite duration or one terminable at will as in this case.

Paragraph (2) of the proviso requires a party desiring termination or modification of a contract to offer to meet and confer with the other party for the purpose of "negotiating a new contract or a contract containing the proposed modifications." Such language points to the negotiation of a contract to succeed an existing contract upon its expiration date.

Paragraph (4) of the proviso directs that a party desiring to terminate or modify a contract shall continue in effect, without resort to strike or lockout, the terms of the contract "for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later." The notice referred to in this paragraph is the notice which paragraph (1) states shall be given "sixty days prior to the expiration date" of a contract. Hence the 60-day period during which strikes and lockouts are banned by paragraph (4) would ordinarily be the 60-day period immediately preceding the expiration date of a contract. However, in the event the party who is required to give notice delays and fails to give notice at the time specified in paragraph (1), he is prohibited from engaging in a strike or lockout after the expiration date of the contract when he would otherwise be free to exert his economic force; he may not use such tactics until 60 days after he has given the required notice. Thus paragraph (4) regulates the conduct of parties to a contract during the period around its expiration date.

That part of Section 8 (d) after the outline of procedure to be followed by a party seeking termination or modification of a contract further demonstrates that the

proviso applies only to termination or modification of a contract upon its expiration. Here Section 8 (d) explains that the duties imposed by paragraphs (2), (3), and (4) shall become "inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased

708

to be the representative of the employees subject to the provisions of Section 9 (a)." [Emphasis supplied.] Under our well-known contract bar policy the Board refuses to conduct representation proceedings when a bargaining contract is in existence, absent unusual circumstances. Therefore, an "intervening certification" would usually occur only during the period around the expiration date of a contract.

Section 8 (d) further clarifies the proviso by stating that the obligations set forth in paragraphs (2), (3), and (4) shall not be construed as requiring either party to a contract for a fixed period to discuss modification of its terms if such modifications will become effective before the contract provides for the reopening of terms. Therefore the modifications contemplated by paragraphs (2), (3), and (4) — modifications on which the parties have an obligation to discuss — must be modifications which would become effective upon the expiration of the existing contract and which would appropriately be negotiated during the period around the expiration date of the contract.

Finally, Section 8 (d) provides that "any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee . . . for the purposes of Sections 8, 9, and 10, of this Act." [Emphasis supplied.] This language contemplates only one 60-day period, the notice period which paragraph (1) declares shall begin 60 days before the expiration date of an existing contract. It does not contemplate a 60-day cooling-off period at any time during

the term of a contract that one party desires to change the contract. The proviso does not purport to regulate strikes or strikers at any time other than during this specified 60-day period.

Not only does the wording of the proviso to Section 8 (d) show that Congress was prescribing certain standards of conduct during the period around the expiration of a contract, but the legislative history concerning the proviso also supports this view:

The provisions of Section 8 (d) were derived from the Senate Bill. The Senate Report on S. 1126 referring to Section 8 (d) states:

"Another substantive feature of this subsection is a provision which relates to employers and labor organizations which are parties to collective agreements. Most agreements

709

have an expiration date, with an automatic renewal clause in the absence of advance notice by either side of a desire to terminate or modify. Under this section, parties to collective agreements in the future would be required to give 60 days' notice in advance of the termination date, if they desire to terminate or amend. Should the parties fail to agree on a new contract in the next 30 days, the party taking the lead in refusing the old contract has the duty to notify the new Federal Mediation Service of the impasse. Should the notice not be given on time, irrespective of the presence or absence of a 60-day clause in the collective agreement, it becomes an unfair labor practice for an employer to change any of the terms or conditions specified in the contract for 60 days or to lock out his employees. Similarly, it is an unfair labor practice by a union to strike before the expiration of the 60-day period. Any employee who engages in a strike during the 60-day period would lose any rights under Sections 8, 9,

and 10 of the Wagner Act, unless and until he is re-employed. It should be noted that this section does not render inoperative the obligation to conform to notice provisions for longer periods, if the collective agreement so provides. Failure to give such notice, however, does not become an unfair labor practice if the 60-day provision is complied with." (Emphasis added.) (Sen. Rep. No. 105 on S. 1126, p. 25.)

The legislative history, as reflected in the remarks of Senator Taft on the floor of the Senate, also demonstrates that the purpose of the proviso, in his opinion, was to afford the parties to a contract adequate time "before the end of the contract" for free collective bargaining and the intervention of the Mediation Service. In this connection Senator Taft stated:

"We have provided in the revision of the collective bargaining procedure, in connection with the mediation process, that before the end of the contract, whether it contains such a provision or not, either party who wishes to open the contract may give 60 days' notice in order to afford time for free collective bargaining, and time for the intervention of the Mediation Service. If such notice is given, the bill provides for no waiting except during the life of the contract itself. If, however, either party neglects to give such notice and waits, let us say, until 30 days before the end of the contract to give the notice, then there is a waiting period provided during which the strike is an unlawful labor practice for 60 days from that time, or to the end of the contract and 30 days beyond that time.

In that case there is a so-called waiting period during which a strike is illegal, but it is only brought about by the failure of the union itself to give the notice which the bill requires shall be given. So it seems to me to be no real limitation of the rights of labor unions." (Cong. Rec., April 23, 1947, p. 3955). (Emphasis added.)

Likewise, Senator Ives, in proposing an amendment to Section 8 (d) (3), not material to this case, described Section 8 (d) as one, "which provides that employers or employees shall serve notice 60 days before the expiration of a contract if there is going to be any change. . ." (Emphasis supplied.) (Cong. Rec., May 9, 1947, p. 5081).

710

The Chairman and Members Rodgers and Beeson argue that it would be futile to require a cooling-off period only at the termination of the contract. But that is just what Congress did, although I cannot agree that Congress by so doing indulged in a futility. Their opinion states that "it is as desirable to discourage interruptions to the free flow of commerce arising from labor disputes during the life of a bargaining agreement as at or near its termination." This conclusion, which appears to be central to their interpretation of Section 8 (d), seems to me to be based essentially upon what they individually believe would be good policy rather than upon the language of the statute or the legislative history. It is my opinion, however, that it is neither incumbent upon the Board nor proper for the Board to question the wisdom of Congress as reflected in the words of Section 8 (d) and its legislative history. In the words of the Supreme Court of the United States in Colgate-Palmolive Peet v. N. L. R. B., 338 U. S. 355 at 363, "It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute." I am of the opinion that my interpretation of Section 8 (d) is a literal application of the language enacted by Congress toward a logical and reasonable result. By giving literal effect to the words of Congress, I have avoided statutory surgery, on the one hand, or legislative policy engrafting, on the other.

Although the language of the statute speaks for itself, I have also found, as it appears above, that supporters of the bill, including the Chairman of the Senate Committee, believed that Section 8 (d) was applicable only at the time around the expiration of the contract. In going to the legislative history, I have looked to the Committee Reports

and the statements in debate of supporters of the bill, unlike the Chairman and Members Rodgers and Beeson, who rely upon the statements of Senators Murray and Morse who voted against the bill and upon the Senate Minority Report. As the Supreme Court stated in Schwegmann Bros. v. Calvert Distillers Corp., 341 U. S. 384 at 394, "The fears and doubts of the opposition are no authoritative guide to the construction of legislation. It is the sponsors that we look to when the meaning of statutory words is in doubt."

I cannot, among other things, reconcile the provision of Section 8 (d) that, "the duties so imposed shall not be construed as requiring either party to

711

discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such term, and conditions can be reopened under the provisions of the contract" with the conclusion of Member Peterson that Congress established a mandatory 60-day "cooling-off" period which "attaches whenever the parties enter into negotiations to modify or terminate a contract." Is it reasonable to conclude that Congress could have required a "cooling-off period" for bargaining at a time when it expressly stated neither party was under an obligation to bargain on changes in the contract?

I wish to make it clear beyond any doubt that in my opinion Congress has not removed no-strike clauses in contracts from the sphere of collective bargaining and legislated them into every collective bargaining agreement by the terms of Section 8 (d). Congress did, in effect, write into contracts a 60-day notice period similar to the 60-day notice to terminate or modify contracts with automatic renewal clauses, which the Senate Report stated are found in "most agreements." In referring to such contractual provisions, the Senate Report, quoted earlier, stated that "irrespective of the presence or absence of the 60-day clause in the collective agreement" parties to contracts must

give such 60-day notice to terminate or modify under Section 8 (d): I am unable to perceive in the language of Section 8 (d) or in the legislative history any indication that Congress intended to remove agreements not to strike from the practices and procedures of collective bargaining and to write a no-strike clause into every collective bargaining contract. I would, moreover, be very hesitant to make such an inference of Congressional intent in the face of the admonition contained in Section 13 of the Act, which states: "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right." (Emphasis supplied.)

That Congress did not intend to enact compulsory no-strike clauses into contracts is also evident from another section of the Senate Report. In Senate Report No. 105 on S. 1126, on pages 16 and 17, the Senate Committee discussed Title III of the amendment which relates to suits by and against labor organizations

712

for breach of collective bargaining agreements. The Committee viewed the provisions of Section 301 as insuring the stability to be desired in collective bargaining relations. The Committee, however, made it apparent that it did not intend to write no-strike clauses into collective bargaining agreements by the enactment of Section 8 (d), for on page 17 immediately following the paragraph quoted in footnote 3 of the three-Member opinion the Report stated:

It has been argued that the result of making collective agreements enforceable against unions would be that they would no longer consent to the inclusion of a no-strike clause in a contract. This argument is not supported by the record in the few States which enacted their own laws in an effort to secure some measure of union responsibility for breaches of contract. Four States—Minnesota, Colorado, Wisconsin, and California—have thus far enacted such laws and,

so far as can be learned, no-strike clauses have been continued about as before.

In any event, it is certainly a point to be bargained over and any union with the status of "representative" under the NLRA which has bargained in good faith with an employer should have no reluctance in including a no-strike clause if it intends to live up to the terms of the contract. The improvement that would result in the stability of industrial relations is, of course, obvious. (Emphasis supplied.)

If Congress had intended to prohibit strikes at any time during the term of a contract, would it have been concerned with the argument that Title III, Section 301, (that labor unions may sue and be sued in the Federal courts) would discourage unions from agreeing to the inclusion of no-strike clauses in contracts? If it had been intended to remove no-strike provisions from the realm of collective bargaining, would the Report have then stated that the inclusion of no-strike clauses in contracts "is certainly a point to be bargained over?" Would it have made the declaration of opinion that a union which intends to live up to its contract ought not to be reluctant to agree to a no-strike clause? I think not.

The Chairman and Members Rodgers and Beeson refer to the interpretation given to Section 8 (d) by the Court of Appeals for the Eighth Circuit in Local No. 3, United Packinghouse Workers of America, CIO v. National Labor Relations Board. In my opinion the Court rejected the construction placed upon Section 8 (d) by the Chairman and Members Rodgers and Beeson; the Court also refused to accept the interpretation of Member Peterson. Both viewpoints were

713

presented to the Court. Under these circumstances and with due respect to the Court of Appeals for the Eighth Circuit, I am constrained to adhere to the views expressed in my opinion until the Supreme Court of the United States has had an opportunity to pass on the question.

The Chairman and Members Rodgers and Beeson state that their interpretation does not have the effect of writing a no-strike clause into every contract — only into some agreements. It is apparent that this statement significantly limits the broad, general, and sweeping language and rationale which appear before that statement in their opinion. As I have explained earlier, however, the language of Section 8 (d) contemplates one 60-day period within which employees who engage in a strike shall lose their status as employees.

The three-member opinion further states that their interpretation of Section 8 (d) "preserves the right to strike in all circumstances where the parties have provided in their agreement for negotiating substantial changes in its provisions . . ." This in its context is tantamount to saying that Section 8 (d) wrote a no-strike clause in every collective bargaining contract for the period of its duration but that the parties by agreement to a reopening clause can nullify or abrogate the statutory provision as the three Members construe it. This in itself as a principle is very questionable, but more than that, I find it extremely difficult to reconcile this position with that taken by the same Board Members in General Electric Company, 108 NLRB No. 183, where the majority set aside a contract as a bar to a representation petition because of the nature of its reopening provisions. As I view it, the three Members are stating in the present case that they are protecting the right to strike during the term of a contract if the parties have provided for reopening to negotiate substantial changes. With equal force, however, in the General Electric case the majority has declared that if the parties do exercise the right to agree on such provisions, under the circumstances of that case, stability does not exist and the union is immediately vulnerable to a rival petition. Not contributing to an understanding of what the majority is preserving is the majority opinion in American Lawn Mower Co., 108 NLRB No. 215, (cited by the three Members in footnote 9) in which the modification and termination clauses of a contract were

714

co-terminous and where the majority, holding that a notice to modify actually terminated the contract, stated, "It would seem incongruous to hold that there is a valid contract binding upon the parties at the very time that the Union strikes to obtain an effective agreement with the Employer." I fail to discern the filament of logic or consistency which would make these various statements and decisions coherent.

As I analyze their opinion, the Chairman and Members Rodgers and Beeson further limit the general basis of their argument by stating that the opinion expressed by them "has no bearing on the right to strike for reasons and purposes other than to obtain contract modification or termination." By this, I take it, they agree with the decision in Mastro Plastics Corp., 103 NLRB 511, where former Chairman Herzog and I dissented in part. As we stated: "The language used in Section 8 (d) does not distinguish as to what types of strikes or lockouts are prohibited during the 60-day period." Our reasons for disagreeing with the majority on this point are fully expressed in our opinion in that case and will not be repeated here.

In summary, as to the interpretation of Section 8 (d), I am convinced by the language of that section that the proviso applies only when parties to a fixed-term contract seek to terminate or modify it upon its expiration or when they seek to terminate or modify a contract of indefinite duration or one terminable at will. I further think that this view is a reasonable one, consistent with the intent of Congress as revealed in the legislative history.

Having reached this conclusion as to the meaning of Section 8 (d) there remains the effective application of this section to the facts in the present case. As I interpret the duration provisions of the contract between the Respondent and the Union, the contract was to be in effect until October 23, 1951, and thereafter was to continue as a contract terminable at will upon the giving of notice in accordance with specified procedure. After October 23, 1951, therefore, the contract was in existence without a definite

termination date, but could be brought to expiration simply and reasonably by compliance with its clear terms at the will of either party. Under my view of the Statute, Section 8 (d) was applicable whenever one of the parties desired to terminate this latter contract. The Union

715

was therefore obligated at such time to comply with the procedures set forth in that section. Such procedures required the Union here, where the contract contained no expiration date, to serve written notice upon the Respondent of its proposed termination or modification of that contract 60 days prior to the time it proposed to make such termination or modification and to refrain from striking during those 60 days. This the Union failed to do when it went on strike in April 1952 to compel immediate modification or termination of the existing contract by agreement on the Union's proposals. The earlier notice it gave on August 24, 1951, did not meet the 8 (d) requirements. That notice was of a desire to amend the initial contract for the purpose of complying with the provisions of the contract on amendments; it was given before the contract terminable at will came into being and hence was given before the period when the proviso to Section 8 (d) applied. As the Union failed to give notice to the Respondent and the Conciliation Service and any state mediation agency as required by Section 8 (d), and the employees, nevertheless, struck, the strikers lost their status as employees of the Respondent and were not entitled to reinstatement at any time after they struck on April 30, 1952.

The Chairman and Members Rodgers and Beeson have decided that the "expiration date" or "modification date" of the contract was October 23, 1951, and conclude that the notices given on August 24, 1951, met the requirements of Section 8 (d). According to them, "If Section 8 (d) is considered in the framework of industrial reality and in the perspective of the Congressional purpose to protect the stability of collective bargaining agreements against strikes and lockouts during the life of a contract, it be-

comes clear that Congress used the term 'expiration date' to signify the date in the course of a labor contract when the contract by its own terms is subject to either modification or termination . . . That Congress was aware of, and took into consideration, the fact that many contracts contain a 60-day automatic renewal provision effective 60 days before the termination date of a contract is apparent from the reference made to those provisions on page 25 of the Senate Report which is quoted and discussed earlier in this opinion. I do not know, however, what "framework of industrial reality" dictates that the Chairman and Members Rodgers

716

and Beeson then find that "expiration date" means something esoteric, something quite unlike the meaning ordinarily applied in the law of contracts. I suggest that the problem of expiration date, which to me means "termination date," created by the Chairman and Members Rodgers and Beeson would quickly dissolve if they were willing to read, and to give effect to, the simple and cogent language of the contract itself. Under those provisions the notice given on August 24, 1951, did not terminate the contract, and, when October 23, 1951, arrived, the contract did not expire, but under its terms was converted into a contract terminable at will upon the giving of the 60-day notice to terminate required by its terms. It is my opinion that, except when it would be contrary to law, the terms of a contract freely arrived at after collective bargaining should be given the clear meaning intended by the contracting parties.

In view of the Union's failure to comply with Section 8 (d) of the Act and the Respondent's genuine attempts to reach a collective bargaining agreement from August 29, 1951, to August 3, 1952, when a new contract was executed, I would not find violations of Section 8 (a) (5) in the isolated incidents alleged as such violations.

As I would find neither a violation of Section (a) (3) nor Section 8 (a) (5), I would dismiss the complaint in this case.

Dated, Washington, D. C. Aug 5 1954

Abe Murdock, Member

National Labor Relations Board

717

APPENDIX A

NOTICE TO ALL EMPLOYEES
PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT discourage membership in OIL WORKERS INTERNATIONAL UNION, CIO, or in any other labor organization of our employees, by discriminating against them in regard to their hire and tenure of employment or any term or condition of employment.

WE WILL NOT in any manner interfere with, restrain or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other mutual aid or protection, and to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL MAKE whole the employees who went on strike on April 30, 1952, for any loss of pay suffered as a result of the discrimination against them between June 21, 1952, and August 3, 1952.

WE WILL NOT engage in any acts, in any manner interfering with the efforts of OIL WORKERS

INTERNATIONAL UNION, CIO, to negotiate for, or represent, the employees in the bargaining unit consisting of:

All production, chemical, and operating employees and all janitors, porters, maids, and laborers, at our Chemical Plant at El Dorado, Arkansas, excluding all other maintenance employees, guards, firemen, office and clerical employees, non-working foremen, and supervisors as defined in the Act.

Lion Oil Company

(Employer)

By

(Representative)

(Title)

Dated

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

LION OIL COMPANY PETITIONER

VS.

NATIONAL LABOR RELATIONS BOARD
RESPONDENT

**Petition for Review of, and to Set Aside, an Order of
National Labor Relations Board.**

Comes Lion Oil Company (hereinafter referred to as "Petitioner"), by its attorneys, and petitions this Honorable Court to review and set aside an order, dated August 5, 1954, of Respondent, National Labor Relations Board

(hereinafter referred to as the "Board"), by which the Petitioner is aggrieved and its interests are adversely affected, and respectfully shows to the Court:

I.

On August 5, 1954, the Board entered an order (109 NLRB No. 106) requiring the Petitioner to make whole with respect to loss of earnings during the period between June 21, 1952, and August 4, 1952, 546 employees of the Petitioner, who went on strike on April 30, 1952, to enforce a demand for additional economic benefits, who offered, on June 21, 1952, to return to work at the plant at which they were employed at the time the strike began and who were refused employment by the Petitioner until August 4, 1952, the date upon which the dispute was settled and upon which each striking employee returned to work. The Petitioner was further ordered to cease and desist in discouraging membership in Oil Workers International Union, C. I. O., the union which represented the employees at the time the strike began, or any other labor organization, by acts specified in the order, to cease and desist refusing to bargain collectively with that union as the exclusive representative of the employees who were involved in the strike, or in any other manner interfering, restraining or coercing its employees in the exercise of the right of self-organization. The Petitioner was ordered to post a specified notice in the plant involved and to notify the Regional Director the steps taken to comply with the order. The order was entered after the filing with the Board, on August 11, 1952, of a complaint against the Petitioner, the Petitioner's answer thereto, a hearing before a Trial Examiner of the Board beginning August 26, 1952, an order of the Board, on January 30, 1953, transferring the case to the Board, the issuance of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order issued, on July 30, 1953, by a panel of the Board, and the Petitioner's exceptions thereto, in Board Case No. 15-CA-488.

II.

The Petitioner has, since 1946, continuously maintained its principal operating office at El Dorado, Arkansas, and has continuously operated, since that year, near that city and in Union County, Arkansas, a plant for the manufacture of anhydrous ammonia and derivatives thereof. Each unfair labor practice here in question, each of which arose out of the strike mentioned, was alleged to have been engaged in by the Petitioner in Union County, Arkansas.

III.

The Petitioner seeks relief upon the grounds that the strike here involved was unlawful in that it was called while a contract between the Petitioner and Oil Workers International Union, C. I. O., as the representative of the striking employees, was in full force and effect; that each of the 546 employees, required, by the order of the Board here involved, to be made whole with respect to loss of pay, went out on strike before the expiration date of the collective bargaining contract between the Petitioner and the union representing them, and that the calling of the strike by the union and the participation in it by each employee here involved was in violation of Section 8 (d) of the Labor Management Relations Act of 1947. Therefore, no one of the employees here involved was entitled to re-employment as a matter of right, and the Board had no right or jurisdiction to order the Petitioner to make any one of those employees whole with respect to loss of pay suffered by him during the period between June 21, 1952, and August 3, 1952, nor to enter any other part of its order against the Petitioner in this case.

IV.

WHEREFORE, your Petitioner prays

(1) That a copy hereof be forthwith served upon the Board.

(2) That that Board be required to certify to this Court a transcript of the record of proceedings wherein

the order against the Petitioner hereinbefore mentioned⁹ was entered, including the entire record before the Board, in this case, together with the Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order of the Board, Petitioner's exceptions thereto, and the order of the Board in this case.

(3) That said proceedings, findings, conclusions, and order be reviewed by this Court.

(4) That said order be set aside and this cause be remanded to the Board with directions to dismiss these proceedings against the Petitioner, and

(5) That this Honorable Court grant to the Petitioner such other and further relief as the rights and equities of the parties may require.

Jeff. Davis

B. L. Allen

H. S. Dickens

Attorneys for Lion Oil
Company, Petitioner.

The address of each is
519 Lion Oil Building
El Dorado, Arkansas

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No.

LION OIL COMPANY, PETITIONER

V.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD

**Answer of the National Labor Relations Board to Petition
to Review and Set Aside Its Order, and Request
for Enforcement of Its Order.**

To the Honorable, the Judges of the United States Court
of Appeals for the Eighth Circuit:

Comes now the National Labor Relations Board, here-
in called the Board, and pursuant to the National Labor
Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec.
141 et seq.), herein called the Act, files this answer to the
petition to review and set aside an order of the Board,
and its request for enforcement of the Board's order.

1. Answering the allegations in paragraph I of the
petition for review, the Board prays reference to the
certified copy of the entire record of the proceedings be-

fore the Board, filed herein, for a full and exact statement of the pleadings, evidence, exhibits, rulings, findings of fact, conclusions of law and order of the Board, and all other proceedings had in this matter before the Board.

2. The Board admits the allegations in paragraph II of the petition for review.

3. The Board denies each and every allegation of error contained in paragraph III of the petition for review, and avers that its order is proper in all respects.

Wherefore, the Board respectfully prays this Honorable Court that said petition, insofar as it prays that the Board's order be set aside, be denied.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of the order, issued by the Board on August 5, 1954, in the proceedings before it, entitled "Lion Oil Company and Oil Workers International Union, CIO," being Case No. 15-CA-488 on the docket of the Board. In support of this request, the Board respectfully shows:

(a) Petitioner, a Delaware corporation, does business in the State of Arkansas, and the unfair labor practices found by the Board to have been committed by it also occurred in the State of Arkansas, within this judicial circuit. This Court has jurisdiction of the petition herein and of this request for enforcement by virtue of Sections 10 (e) and (f) of the Act.

(b) Upon proceedings in the said case before the Board, including complaint, answer, hearing to receive evidence, proposed findings of fact and conclusions of law, exceptions thereto, all of which is more fully shown by the certified record filed herewith, the Board on August 5, 1954, duly stated its findings of fact and conclusions of law, and issued an order directed to Petitioner, its agents, successor, and assigns.

So much of the aforesaid order as relates to this proceeding provides as follows:

"Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lion Oil Company, El Dorado, Arkansas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Oil Workers International Union, CIO, or in any labor organization, by discharging, or refusing to reinstate, any of its employees, or by discriminating in any other manner with regard to their hire, tenure of employment, or any term or condition of employment;

(b) Refusing to bargain collectively with Oil Workers International Union, CIO, as the exclusive representative of the employees in the unit herein found to be appropriate;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights of self-organization, to form labor organizations, to join any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole the employees who went out on strike on April 30, 1952, and who are listed in the

complaint herein for any loss of pay they may have suffered by reason of Respondent's discrimination against them, in the manner set forth in the section entitled "The Remedy" in the attached Proposed Findings;

(b) Post at its plant in El Dorado, Arkansas, copies of the notice attached hereto, marked "Appendix A." Copies of such notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by Respondent's representative, be posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Fifteenth Region, in writing, within ten (10) days from the date of this Order, what steps Respondent has taken to comply herewith."

(c) On August 5, 1954, the Decision and Order was served by sending a copy thereof, post paid, bearing a Government frank by registered mail, to Petitioner's counsel, Jeff Davis, Esq., Lion Oil Building, El Dorado, Arkansas.

(d) Pursuant to Sections 10 (e) and (f) of the Act, the Board is certifying and herewith filing a transcript of the entire proceedings before the Board, including the pleadings, evidence, findings of fact, conclusions of law and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of filing of this answer and request for enforcement and of the certified record, to be served upon Petitioner, and that this Court take jurisdiction of the proceedings and of the question determined therein and

make and enter upon the pleadings, evidence, and proceedings set forth in said record, and upon so much of the order made therein, as is set forth hereinabove, a decree denying the petition to set aside and enforcing the order of the Board.

/s/ David P. Findling

David P. Findling

Associate General Counsel

National Labor Relations Board

Dated at Washington, D. C. this 30th day of September
1954.

249 United States Court of Appeals for the
Eighth Circuit

No. 15158

LION OIL COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AN ORDER OF THE NATIONAL LABOR
RELATIONS BOARD*Opinion*

April 22, 1955

Jeff Davis (B. L. Allen and H. D. Dickens were with him on the brief), for Petitioner.

Duane Beeson (George J. Bott, David P. Findling, Marcel Mallet-Prevost and Frederick U. Reel were with him on the brief), for Respondent.

Lindsay P. Walden and William E. Rentfro filed brief for Oil Workers International Union, CIO, as Amicus Curiae.

Before SANBORN, JOHNSEN and VOGEL,
Circuit Judges

250 VOGEL, Circuit Judge.

This case is before the court upon the petition of Lion Oil Company to review and set aside an order of the National Labor Relations Board, and upon request of the Board for enforcement of its order issued against the Lion Oil Company on August 5, 1954, following proceedings under Section 10 of the National Labor Relations Act, as amended (61 Stat. 136, 29-U.S.C., Sec. 151, et seq.).

The petitioner, Lion Oil Company (hereinafter referred to as "Company") and Oil Workers International Union CIO (hereinafter referred to as "Union") entered into a collective bargaining contract providing in detail the wages, hours and conditions under which employees should work for the Company during the term of the agreement. Insofar as it is applicable to the problem presented herein, the agreement between the Company and the Union provided as follows:

"ARTICLE I

TERM OF AGREEMENT

This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

251 (b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

On August 24, 1951, the Union transmitted by mail to the Company and to the Federal Mediation and Conciliation Service the following letter:

"OIL WORKERS INTERNATIONAL UNION, C. I. O.

EL DORADO LOCAL NO. 434

El Dorado, Arkansas

AUGUST 24, 1951.

Registered mail. Return receipt requested. Special delivery.
LION OIL COMPANY,

Lion Oil Building, El Dorado, Arkansas.

Attention: Mr. T. M. Martin, President.

FEDERAL MEDIATION AND CONCILIATION SERVICE,

14th and Constitution Avenue NW., Washington 25, D. C.

GENTLEMEN: Pursuant to the provisions of the Labor-Management Relations Act of 1947, you are hereby notified that we desire to modify the collective bargaining contract now in effect between your company and this Union, in accordance with the provisions of the agreement.

We are attaching hereto some of the proposed changes which we desire to include in a new contract or as modifications to the present agreement. We shall be glad to and now offer to meet and confer with you for the purpose of negotiating a new contract or modifications to the present agreement.

252 Copies of this notice are being served upon the Federal Mediation and Conciliation Service, and the appropriate State Agency for the purpose of advising them of this dispute solely because of the alleged requirements of Section 8 (d) (3) of the Labor-Management Relations Act of 1947, and subject to the validity of all provisions of such Act.

Sincerely yours,

OIL WORKERS INTERNATIONAL UNION, C. I. O.,

By (S) E. P. SHELTON,

Chairman Workmen's Committee,

Lion Oil Group Local 434—OWIU-CIO."

Representatives of the Company and the Union first met on August 29, 1951, to discuss the proposed amendments. Between that date and April 30, 1952, there were 37 meetings held for the same purpose. No agreement was arrived at.

On April 30, 1952, the employees of the Company went on strike for a wage increase and other benefits.

Neither the Company nor the Union notified the other that it intended to *terminate* the contract. On June 21, 1952, after the employees here involved had been on strike continuously from April 30, 1952, the Union offered to return all striking employees to work unconditionally. The Company refused such offer. Subsequently it distributed to all employees copies of a letter to the Union in which it defended its position that there would be no reinstatement of the strikers "until such time as the (employees) are willing to agree to go to work and continue to work for a period of at least one year with no strike or other work stoppage during that period."

253 Subsequent to June 21st numbers of employees, singly and in groups, appeared at the Company's plant, were interviewed by the plant superintendent and rehired upon the assurance of each individual that he would "continue to come to work daily and continuously throughout the period of the remainder of the strike" and that he would not honor any picket line at the Company's plant. It was made clear that without such assurances no striker would be permitted reinstatement. Between June 21, 1952, and August 3, 1952, 27 negotiation meetings between representatives of the Company and the Union were held in an effort to settle the dispute.

On August 3, 1952, a new agreement was formally executed with the employees being reinstated the following day.

During the period of negotiations the Union filed with the National Labor Relations Board a charge of unfair labor practices against the Company. The charge was based upon the activities of the Company subsequent to the Union's offer to return the strikers to work.

The Company filed an answer to the charge in which it denied the allegations of unfair labor practices and, further, set up as a separate defense the claim that the strike was an unlawful one because it was called by the Union at a time when there was in effect between the Union and the Company a collective bargaining contract; that the strike was in violation of the contract provisions, constituted an unfair labor practice and that the employees participating therein thereby lost their status as employees and were not entitled to relief.

By a split decision (one member dissenting and one concurring specially) the Board held that the Company was guilty of unfair labor practices within the meaning of Sections 8 (a) (1), 8 (a) (3) and 8 (a) (5) of the National Labor Relations Act and rejected the Company's defense that the strikers had lost the protection of the Act because they had struck while a contract as in effect. It is this decision and the resulting order that are under review here.

The primary question is this: Was the strike of April 30, 1952 in violation of the agreement between the parties and contrary to the provisions of Section 8 (d) of the Act? The relevant portions of that Section are as follows:

"* * * where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

"* * * Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an

employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9 and 10 of this Act, as amended * * *"

255 In its decision the Board held, in effect, that while the contract was in force at the time of the strike, it was not a contract of fixed duration and that the notice of August 24, 1951 with reference to modification satisfied the provision of Section 8 (d) and that accordingly the strike was not unlawful. The majority opinion stated:

"It suffices for our decision here that the contract specifically provided for modification and that the earliest date on which modification could be made effective was October 23, 1951. The notice was given precisely 60 days before that date. As the notice was served on August 24, the end of the 60 days statutory period and the date fixed in the contract for making modifications (which as indicated above, we consider tantamount to 'expiration' as that term is used in Section 8 (d) (4)) coincided. Thus, the Union, before striking to enforce its economic demands satisfied the statutory requirements, and consequently the striking employees never lost the protection accorded economic strikers by the Act."

We cannot agree with such interpretation of the Act nor with the majority's apparent disregard of the plain provisions of the contract between the parties. The contract, in the first paragraph, provides that it shall remain in effect for a fixed period; that is, October 23, 1950 to October 23, 1951, "*and thereafter until canceled in the manner herein in this Article provided*". [Emphasis supplied.] After October 23, 1951, the contract became an indefinite one as to time but terminable at the will of either party upon complying with the specific provisions therein set forth.

The provisions with reference to *amendment* and *termination* are separately stated and are clear and unambiguous. If either party to the agreement desired to *amend* the terms thereof it would have to notify the other in writing of such desire. No such

256 notice could be given prior to August 24, 1951. During the period of 60 days immediately following the date of the receipt of such notice, the Company and the Union were to attempt to agree as to amendments proposed. If an agreement with respect to the proposed amendments was not reached within the 60-day period following the notice, then " * * * either party may terminate this agreement *thereafter* upon not less than 60 days' written notice to the other". [Emphasis supplied.] The wording and the intent of the contract are clear. The word "thereafter" can only refer to a time *after* attempts to negotiate amendments had failed for a period of not less than 60 days. Then, and only then, could either party terminate the contract and then only by

resorting to the provisions with reference to notice and a waiting period of 60 days.

We note that the Supreme Court of Arkansas, in referring to the same striking employees and the same contract here involved, said in *Lion Oil Co. v. Marsh*, 249 S. W. 2d 569, 571;

"Agreement in Force.—It can hardly be disputed that the agreement referred to above was in full force when the strike and picketing occurred, as a casual reading of Article I set out above will show. Appellees (union member employees) could have easily effected a legal cancellation of the contract by giving the notice provided for therein, but the record does not show this notice was given. Since the terms of the agreement provided for an automatic continuation after October 23rd, 1951 the burden was on appellees to show they had terminated the agreement by giving the required notice, but this burden has not been met. * * *"

We thus had in existence on April 30, 1952 a collective bargaining contract, binding upon the Company and the Union, indefinite as to time but terminable by either party upon 60 days' notice. The Board would disregard the separate provisions in the contract with reference to *termination* as distinguished from *amendment*. In interpretation, contracts, whether labor or otherwise, are entitled to their plain, ordinary meaning. The intent of the parties to the contract appears obvious—a fixed status quo for a period of one year; the possibility of bilateral action to amend after the expiration of the first ten months, and, thereafter, a period of 60 days for negotiation; and the possibility of unilateral termination by either party after the expiration of the one year and upon the giving of 60 days' notice thereafter. They would not have had to so contract. The point is that they did and the contract is binding upon both and continues after the fixed period of one year for an indefinite time unless terminated by either party thereafter in accordance with the provisions relating to *termination*.

There being in existence at the time of the strike a collective bargaining agreement between the Company and the Union, the situation is not too dissimilar to that presented in *Local No. 3, United Packinghouse Workers of America, CIO v. National Labor Relations Board, et al.*, 210 F. 2d 325, in which this court said at pages 332 and 333:

"The strike was not called until after sixty days after the giving of the required notice. However, the expiration date of the collective bargaining contract between the company and the union expired later and hence it is argued that no strike could properly be called until after the expiration date of the contract. The Board strenuously argues that so construing the statute would to a considerable extent be destructive of its purpose. It is urged

that so construed there could be no strike during the life of the contract between the employer and the union. That argument we think a very proper one to be addressed to the Congress and apparently it was urged upon Congress.

258 We are of the view that by going out on strike before the expiration date of the collective bargaining contract the employees lost their status as employees of the company and hence they were not entitled to re-employment as a matter of right."

We have here in the instant case a situation where the Union and the Company sought industrial peace through a collective bargaining agreement providing for a period of negotiation after notice of a desire to *amend* and a waiting period after notice of *termination* which could only follow failure to agree. The Board's decision would read out or ignore that part of the agreement dealing with notice of *termination* and the 60 days' waiting period to follow. That may not be done. The parties had a right to contract as they did and the plain provisions of their mutual agreement should be enforced.

At the time of the strike in question there existed a binding contract between the Union and the Company. It had not been terminated in accordance with its provisions. The strike was accordingly in violation of Section 8 (d) and the strikers lost their status as employees of the Company and are not entitled to the relief provided in the Board's order.

The request of the Board for enforcement of its order is denied, and the order is set aside.

259 United States Court of Appeals for the
Eighth Circuit

No. 15158. September Term, 1954

LION OIL COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Decree

April 22, 1955

This matter came on to be heard on the petition of the Lion Oil Company to review and set aside the Order of the National

Labor Relations Board issued August 5, 1954, and on the response of said Labor Board requesting entry of a Decree denying the petition and enforcing its Order, and was argued by counsel.

On Consideration Whereof, It is now here Ordered, Adjudged and Decreed by this Court that the Petition to set aside the Order of the National Labor Relations Board in this matter be, and it is hereby, granted, and the Order is set aside. The request of said Board for enforcement of its Order is hereby denied.

APRIL 22, 1955.

260 [Clerk's certificate to foregoing transcript omitted in printing.]

261 Supreme Court of the United States

Order allowing certiorari

Filed March 12, 1956

[Title omitted.]

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office - Supreme Court, U. S.

FILED

JUL 15 1955

HAROLD B. WILLEY, Clerk

No. -241

In the Supreme Court of the United States

OCTOBER TERM, 1955

NATIONAL LABOR RELATIONS BOARD; PETITIONER

v.

LION OIL COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT

SIMON E. SOBLOFF,

*Solicitor General,
Department of Justice,
Washington 25, D. C.*

THEOPHIL C. RAMMHOELZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

DOMINICK L. MANOLI,
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DUANE BEESON,
Attorney,

*National Labor Relations Board,
Washington 25, D. C.*

INDEX

Opinions below	Page 1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Reasons for granting the writ	9
Conclusion	14
Appendix A	15
Appendix B	27

CITATIONS

Cases:

<i>Amalgamated Association v. W. E. R. B.</i> , 340 U.S. 383	12
<i>Local No. 3, United Packinghouse Workers of America v. Wilson & Co. and National Labor Relations Board</i> , 210 F. 2d 325, certiorari denied, 348 U.S. 822	9
<i>Mastro, Plastics Corp. v. National Labor Relations Board</i> , October Term, 1955, No. 19, certiorari granted, 348 U.S. 910	10
<i>National Labor Relations Board v. International Rice Milling Co.</i> , 341 U.S. 665	12
<i>U.A.W. v. O'Brien</i> , 339 U.S. 454	12

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., 151, <i>et seq.</i>):	
Section 8(d)	2, 4, 12, 13, 14, 27

Miscellaneous:

<i>Collective Bargaining Agreements</i> , BLS Report No. 75 (Dept. of Labor, Bur. of Labor Stat., December 1954), p. 3	11
<i>Collective Bargaining Service</i> , Bureau of National Affairs, 15:75, 325; 36:301	11
Monthly Labor Review, Vol. 74, pp. 272, 274 (Bureau of Labor Statistics, March 1952)	12

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LION OIL COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered on April 22, 1955, denying the Board's petition for enforcement of its order against Lion Oil Company.

OPINIONS BELOW

The opinion of the court below (App. A, *infra*, pp. 15-26) is reported at 221 F. 2d 231. The findings of fact, conclusions of law, and order of the Board (R. 205-219) are reported at 109 NLRB 680.

JURISDICTION

The judgment of the court below was entered on April 22, 1955. The jurisdiction of this Court is

invoked under 28 U.S.C. 1254, and Section 10(e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Section 8(d)(4) of the Act provides that parties who wish to modify or terminate a collective bargaining contract must "continue . . . in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice [of their wish to modify or terminate] is given or until the expiration date of such contract, whichever occurs later."

The question presented is whether the requirement of the foregoing Section is satisfied where a contract provides for negotiation and adoption of modifications at an intermediate date during its term, and a strike in support of modification demands occurs after the date on which such modifications may become effective—and after the sixty day notice period has elapsed—but prior to the terminal date of the contract.

STATUTE INVOLVED

The statutory provision principally involved, Section 8(d) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), appears in Appendix B, *infra*, pp. 27-29.

STATEMENT

1. *The Facts.*—The Oil Workers International Union, C.I.O., hereafter called the Union, was certified by the Board as the representative of the

Company's employees in 1944, and in the years following entered into a series of collective bargaining agreements with the Company (R. 148; 2, 14). The last of these agreements prior to the events here involved was entered into on or about October 23, 1950, and it provided, *inter alia* (R. 28):

This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon

not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective.

On August 24, 1951, the Union, in accordance with the foregoing contract provision, served written notice on the Company of its "desire to modify the collective bargaining contract now in effect," and attached thereto "some of the proposed changes" it wished to make (R. 150; 81-94). Copies of the Union's notice were also sent to the Federal Mediation and Conciliation Service and the State Labor Commissioner of Arkansas for the express purpose of conforming with the requirements of Section 8(d)(3) of the Act (R. 150; 81-82).¹

Contract negotiations with respect to the proposed modifications began shortly thereafter, and continued through the fall and winter (R. 150-151; 15-16). Neither party notified the other that it wished to terminate the existing contract, but on February 14, 1952, no agreement having been reached, the employees voted to strike in support of wage and other economic demands which had been made by the Union but rejected by the Com-

¹ Section 8(d)(3) provides in substance that in fulfillment of the statutory duty to bargain collectively an employer or labor union desiring to modify or terminate an existing contract must, *inter alia*, serve notice of the fact that a labor dispute has arisen on "the Federal Mediation and Conciliation Service within thirty days * * * and * * * any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time."

pany (R. 151; 102-103, 24). The proposed strike, originally set for March 3, 1952, was thereafter postponed three times, but when all efforts to avoid it through further negotiations failed, the strike finally went into effect on April 30, 1952 (R. 150-151; 103; 104, 106, 16).

Following several weeks of the strike during which no apparent progress was made toward settling the strike issues, the Union, at a meeting with the Company on June 21, 1952, announced that it "was offering to return all the strikers unconditionally, and wanted to know what schedule they should report on with no strings attached" (R. 153, 155; 134, 128, 110, 144, 94-95). The Company, however, declined the offer, and took the position that the employees could not return to work until the Company's contractual terms were met (R. 153-155; 99-100, 111, 134, 18).

In accordance with the Union's offer to end the strike, large numbers of the employees applied both singly and in groups at the Company's gate or by telephone for reemployment to their jobs (R. 156; 116, 120-121). The plant superintendent interviewed many of the applicants, and rehired some upon condition, individually assented to by those who were reinstated, that each would "continue to come to work daily and continuously throughout the period of the remainder of the strike" and would not honor any picket line at the Company's plant (R. 216; 120, 122, 123, 18-19).

Negotiations for a modified contract continued after June 21 as before (R. 173-176; 115, 135-138).

During July, however, as the parties progressed toward agreement, the Company announced that its execution of a new contract would be conditioned on withdrawal by the Union of the unfair labor practice charge in this case (R. 175-176; 130, 132, 135-137). The Company, however, receded from this position on July 30, and shortly thereafter, on August 3, 1952, accord was finally reached on all disputed issues and the agreement was formally executed (R. 176-177; 115-116). The Company's employees were reinstated the following day, and the plant resumed full production soon thereafter (*ibid.*).

2. *The Board's Decision.*—The Board concluded upon the foregoing facts that the Company had violated Section 8(a)(1), (3) and (5) of the Act when “it rejected the Union’s attempts to get the strikers back to work, but at the same time individually interviewed the strikers and reinstated them upon their assurance that they would not strike” (R. 216-217). This conduct, in the Board’s view, “required employees, as a condition of employment, to give up their adherence to the Union as their bargaining representative” and, instead, to deal with the Company as individuals; accordingly, it constituted both discrimination “violative of the Act, as to the strikers who continued to adhere to the lawful bargaining position of their statutory representative” (*ibid.*), and a refusal to accord full recognition to the Union as the employees’ bargaining representative, as required by the Act. In addition, the Board concluded that the

Company's conditioning of the execution of a contract upon the Union's withdrawal of the unfair labor practice charge filed with the Board constituted a refusal to bargain in good faith, in violation of Section 8(a)(5) of the Act (R. 217).

In reaching these conclusions, the Board rejected the Company's defense that the strikers had lost the protection of the Act because they had struck while a contract was in effect and therefore in contravention of the requirement of Section 8(d) of the Act that no strike in support of contract modifications take place "for a period of sixty days after * * * notice [of a proposed modification] or until the expiration date of [the existing] contract, whichever occurs later." The Board determined that the "expiration date" of a contract, as the term is used in Section 8(d), comprehends "an agreed date in the course of [the contract's] existence when the parties can effect changes in its provisions" (R. 211). Since in this case the contract by its terms was open to modification on October 23, 1951, and since the Union gave notice of a desire to negotiate modifications of it precisely 60 days before that time, and did not strike until several months thereafter, the Board concluded that the strike satisfied the "waiting period" requirements of Section 8(d).²

² Two Board members stated differing views of the meaning of Section 8(d) in separate opinions. Member Peterson, concurring with the majority in result, adopted the earlier view of the Board that Section 8(d) permitted strikes in support of contract changes at any time during a contract after 60 days' notice (R. 219-222). See *Wilson & Co.*, 89 NLRB 310.

3. *The Decision of the Court of Appeals.*—The court below did not reach the merits of the Board's unfair labor practice findings. In its view, the strike failed to satisfy the requirements of Section 8(d) with the consequence, as provided in that Section, that the strikers lost their status as employees under the Act and the protection afforded them by its unfair labor practice provisions.

In its opinion, the court below emphasized that the 60 days' notice given by the Union on August 24, 1951, of its desire to modify the existing contract did not have the effect of terminating the contract. According to the court, and in this respect the Board's decision was in full agreement, the contract by its terms became one of indefinite duration following the lapse of the 60 days' notice period, and was in full effect at the time of the strike. Turning, then, to the application of Section 8(d), the court below rejected the construction given that provision by the Board; instead, it read the statutory language to prohibit strikes during the life of a contract regardless of any reopening provision in the contract. To reach this conclusion, the court construed the phrase "expiration date," in Section 8(d) to be synonymous with "termination date." The reading thus given Section 8(d)

Member Murdock dissented (R. 222-238). In his view, Section 8(d) is applicable only during the period around the termination of a contract. Accordingly, he concluded in this case that since the contract at the time of the strike was terminable by either party, Section 8(d)(4) required fulfillment at that time of the procedures outlined in Section 8(d)(1) through (3) before a strike could lawfully be called.

was the same as that given by the same court in *Local No. 3, United Packinghouse Workers of America v. National Labor Relations Board*, 210 F. 2d 325, certiorari denied, 348 U.S. 822, which was relied upon in the opinion in this case. Since it was clear that the contract in the present case had not terminated, it followed from the court's reasoning that the strike fell within the ban of Section 8(d), and that the strikers therefore lost the protection which the Act normally accords to economic strikers against the commission of unfair labor practices by their employer.

REASONS FOR GRANTING THE WRIT

1. The petition in *Local No. 3, United Packinghouse Workers of America v. Wilson & Co.* and *National Labor Relations Board*, No. 124, October Term, 1954, certiorari denied, 348 U. S. 822, sought determination by this Court of the correct construction and application of Section 8(d) upon facts substantially similar to those in this case. As the Board stated in its memorandum to the Court in that case, "the question of the interpretation of Section 8(d) is one of real importance in the administration of the Act, and we would welcome authoritative resolution of that question." The Board further explained in its memorandum that the Board did not seek Supreme Court review in that case because it was doubtful whether the decision of the court of appeals necessarily rested upon an interpretation of Section 8(d).

The refusal of the court below to enforce the Board's order in this case, on the other hand, rests

solely on its disagreement with the Board's reading of Section 8(d). Thus, although the court below analyzes at length the duration provisions of the contract in this case, it is evident that there is no essential disagreement between it and the Board on this score; both agree that the contract was in full effect when the Union struck. It is likewise undisputed that the strike was in support of the Union's proposed contract amendments, and that it was not called until after the lapse of the 60-day notice period and the date upon which the contract provided that modifications might become effective. Accordingly, the single question presented is whether, where a collective bargaining agreement is by its own provisions subject to modification at an agreed intermediate date during the course of its term, Section 8(d) must be read to prohibit strikes in support of contract modification demands until the terminal date of the contract despite the reopener clause in the agreement.

2. The restriction Congress has placed in Section 8(d) on the right to strike during the term of a contract is of manifest importance in the regulatory scheme of the Act. This Court recently granted certiorari to review the question whether the prohibitions of that section are applicable to strikes in protest against employer unfair labor practices. *Mastro Plastics Corp. v. National Labor Relations Board*, October Term, 1955, No. 19, certiorari granted, 348 U.S. 910. In the Board's view, the scope of the restriction as applied to strikes for contract changes, as here, presents an equally sub-

stantial question, and also warrants final determination by this Court.

Resolution of the question presented in this case is of major importance in the negotiation of hundreds of collective bargaining contracts throughout the country, and in the determination of the rights of the parties thereto. The most recent figures available from the Bureau of Labor Statistics show a markedly high incidence of contracts which, like the one in this case, provide for negotiation and modification prior to termination. Thus, of 284 contracts studied, covering more than six million employees, about 70 percent were for a duration period of longer than a year, and the vast majority of the latter group contained clauses permitting reopening on specific subject matter during the existence of the contracts. *Collective Bargaining Agreements*, BLS Report No. 75 (Dep't. of Labor, Bur. of Labor Stat., December 1954) p. 3. These findings concur with those of other surveys in revealing a decided trend among labor organizations and employers to execute contracts of longer duration than formerly, and to include provisions for reopening to negotiate changes during the contract term. See *Collective Bargaining Service*, Bureau of National Affairs, 15:75, 325; 36:301. The decision of the court below would eliminate resort to strikes in all negotiations for amendments pursuant to the reopening clauses in such contracts. That this would work a change in the relative bargaining power of the parties from that which is contemplated in the bargaining provisions of the

Act is apparent.³ Even where contracts contain no-strike pledges, it is not unusual that such provisions are made inapplicable upon a deadlock in negotiations for changes in a contract during its term. *Monthly Labor Review*, Vol. 74, pp. 272, 274 (Bureau of Labor Statistics, March 1952). Accordingly, whether the decision below is correct is a matter of substantial importance in day to day industrial relations, and warrants review by this Court.

3. In the Board's view, the interpretation of Section 8(d) adopted by the court below fails to give full effect to the critical phrase "expiration date" as it is used in Section 8(d). The court below holds that the "expiration date" of a contract, before which strikes supporting contract demands are prohibited, necessarily is synonymous with the terminal date of the entire contract. This holding overlooks the fact that Section 8(d) also uses the term "expiration date" to refer to a time during the term of a contract when modifications may be put into effect.

Thus, the repeated use of the alternative "termination or modification" throughout Section 8(d)

³ The statement of Senator Taft made during debate on the 1947 amendments to the Act that "... free collective bargaining ... means that we recognize freedom to strike when the question involved is the improvement of wages, hours, and working conditions ..." has three times been recognized by this Court as authoritative gloss on the Act. *Amalgamated Association v. W.E.R.B.*, 340 U.S. 383, 395, n. 21; *U.A.W. v. O'Brien*, 339 U.S. 454, 457, n. 3; *National Labor Relations Board v. International Rice Milling Co.*, 341 U.S. 665, 673, n. 8.

supports the Board's conclusion that the requirements of that Section apply to contract changes negotiated during the term of the contract as well as to negotiations for a new contract. It also seems significant in this regard that the requirement in Section 8(d)(1) that notice be given of a proposed modification is expressly timed to run "sixty days prior to the *expiration date* [of the contract]" [emphasis added]. In this context, it would seem logically to follow that where, as here, the proposed modifications are intended to become effective during the contract's term, the phrase "expiration date" should be taken to refer not only to the termination date of the contract but also to the date during the existence of the contract when the changes may become effective, and the replaced clauses become inoperative. There is no reason to suppose that Congress intended to attribute a different meaning to that phrase as used in Section 8(d)(4) which prescribes a 60-day "waiting period" after notice of modification is given or until the "expiration date" of the contract, whichever occurs later, before a strike can be called.

Moreover, the "waiting period" prescribed by Section 8(d) was designed for the purpose, *inter alia*, of giving the parties a chance to settle a dispute over contract terms with the help of the designated conciliation services. It is reasonable to assume in these circumstances that Congress did not intend the mediation and "waiting period" procedures to apply only at termination but rather intended them to apply as well whenever the terms

of an agreement were subject to modification. In short, the Board believes that the use of the phrase "expiration date" in Section 8(d) and the underlying purpose of that Section show that it encompasses not only the terminal date of a contract but also the first date at which a contract by its own terms is subject to modification. Accordingly, the Board submits that the court below, in rejecting this conclusion, misread the Act, and thereby misapplied the prohibition against strikes in Section 8(d).

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHÖLZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,

DUANE BEESON,
Attorney,
National Labor Relations Board.

JULY, 1955.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH
CIRCUIT

No. 15,158

LION OIL COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review an Order of the National
Labor Relations Board.

(April 22, 1955)

* * * * *

Before SANBORN, JOHNSEN and VOGEL, Circuit
Judges.

VOGEL, Circuit Judge.

This case is before the court upon the petition of Lion Oil Company to review and set aside an order of the National Labor Relations Board, and upon request of the Board for enforcement of its order issued against the Lion Oil Company on August 5, 1954, following proceedings under Section 10 of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Sec. 151, et seq.).

The petitioner, Lion Oil Company (hereinafter referred to as "Company") and Oil Workers International Union CIO (hereinafter referred to as "Union") entered into a collective bargaining contract providing in detail the wages, hours and conditions under which employees should work for the Company during the term of the agreement. Insofar as it is applicable to the problem presented herein, the agreement between the Company and the Union provided as follows:

"ARTICLE I

Term of Agreement

This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

On August 24, 1951, the Union transmitted by mail to the Company and to the Federal Mediation and Conciliation Service the following letter:

"OIL WORKERS INTERNATIONAL UNION, C.I.O.

El Dorado Local No. 434

El Dorado, Arkansas

August 24, 1951

Registered Mail

Return Receipt Requested

Special Delivery

Lion Oil Company

Lion Oil Building

El Dorado, Arkansas

Attention: Mr. T. M. Martin, President

Federal Mediation and Conciliation Service

14th and Constitution Avenue, N. W.

Washington 25, D. C.

Gentlemen:

Pursuant to the provisions of the Labor-Management Relations Act of 1947, you are hereby notified that we desire to modify the collective bar-

gaining contract now in effect between your company and this Union, in accordance with the provisions of the agreement.

We are attaching hereto some of the proposed changes which we desire to include in a new contract or as modifications to the present agreement. We shall be glad to and now offer to meet and confer with you for the purpose of negotiating a new contract or modifications to the present agreement.

Copies of this notice are being served upon the Federal Mediation and Conciliation Service, and the appropriate State Agency for the purpose of advising them of this dispute solely because of the alleged requirements of Section 8 (d) (3) of the Labor-Management Relations Act of 1947, and subject to the validity of all provisions of such Act.

Sincerely yours,

Oil Workers International
Union, C.I.O.

By /s/ E. P. Shelton,
Chairman Workmen's Committee
Lion Oil Group Local 434-
OWIU-CIO"

Representatives of the Company and the Union first met on August 29, 1951, to discuss the proposed amendments. Between that date and April 30, 1952, there were 37 meetings held for the same purpose. No agreement was arrived at.

On April 30, 1952, the employees of the Company went on strike for a wage increase and other benefits.

Neither the Company nor the Union notified the other that it intended to *terminate* the contract. On June 21, 1952, after the employees here involved had been on strike continuously from April 30, 1952, the Union offered to return all striking employees to work unconditionally. The Company refused such offer. Subsequently it distributed to all employees copies of a letter to the Union in which it defended its position that there would be no reinstatement of the strikers "until such time as the (employees) are willing to agree to go to work and continue to work for a period of at least one year with no strike or other work stoppage during that period".

Subsequent to June 21st, numbers of employees, singly and in groups, appeared at the Company's plant, were interviewed by the plant superintendent and rehired upon the assurance of each individual that he would "continue to come to work daily and continuously throughout the period of the remainder of the strike" and that he would not honor any picket line at the Company's plant. It was made clear that without such assurances no striker would be permitted reinstatement. Between June 21, 1952, and August 3, 1952, 27 negotiation meetings between representatives of the Company and the Union were held in an effort to settle the dispute.

On August 3, 1952, a new agreement was formally executed with the employees being reinstated the following day.

During the period of negotiations the Union filed with the National Labor Relations Board a charge of unfair labor practices against the Company. The charge was based upon the activities of the Company subsequent to the Union's offer to return the strikers to work.

The Company filed an answer to the charge in which it denied the allegations of unfair labor practices and, further, set up as a separate defense the claim that the strike was an unlawful one because it was called by the Union at a time when there was in effect between the Union and the Company a collective bargaining contract; that the strike was in violation of the contract provisions, constituted an unfair labor practice and that the employees participating therein thereby lost their status as employees and were not entitled to relief.

By a split decision, (one member dissenting and one concurring specially) the Board held that the Company was guilty of unfair labor practices within the meaning of Sections 8(a)(1), 8(a)(3) and 8(a)(5) of the National Labor Relations Act and rejected the Company's defense that the strikers had lost the protection of the Act because they had struck while a contract was in effect. It is this decision and the resulting order that are under review here.

The primary question is this: Was the strike of April 30, 1952 in violation of the agreement be-

tween the parties and contrary to the provisions of Section 8 (d) of the Act? The relevant portions of that Section are as follows:

“ * * * where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

* * *

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

* * * Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9 and 10 of this Act, as amended * * *.”

In its decision the Board held, in effect, that while the contract was in force at the time of the strike, it was not a contract of fixed duration and that the notice of August 24, 1951 with reference to modification satisfied the provisions of Section 8 (d) and that accordingly the strike was not unlawful. The majority opinion stated:

"It suffices for our decision here that the contract specifically provided for modification and that the earliest date on which modification could be made effective was October 23, 1951. The notice was given precisely 60 days before that date. As the notice was served on August 24, the end of the 60 days statutory period and the date fixed in the contract for making modifications (which, as indicated above, we consider tantamount to 'expiration' as that term is used in Section 8 (d) (4) coincided. Thus, the Union, before striking to enforce its economic demands satisfied the statutory requirements, and consequently the striking employees never lost the protection accorded economic strikers by the Act."

We cannot agree with such interpretation of the Act nor with the majority's apparent disregard of the plain provisions of the contract between the parties. The contract, in the first paragraph, provides that it shall remain in effect for a fixed period; that is, October 23, 1950 to October 23, 1951, *"and thereafter until canceled in the manner herein in this Article provided"*. (Emphasis supplied.) After October 23, 1951, the contract be-

came an indefinite one as to time but terminable at the will of either party upon complying with the specific provisions therein set forth.

The provisions with reference to *amendment* and *termination* are separately stated and are clear and unambiguous. If either party to the agreement desired to *amend* the terms thereof it would have to notify the other in writing of such desire. No such notice could be given prior to August 24, 1951. During the period of 60 days immediately following the date of the receipt of such notice, the Company and the Union were to attempt to agree as to amendments proposed. If an agreement with respect to the proposed amendments was not reached within the 60-day period following the notice, then " * * * either party may terminate this agreement *thereafter* upon not less than 60 days' written notice to the other". (Emphasis supplied.) The wording and the intent of the contract are clear. The word "*thereafter*" can only refer to a time *after* attempts to negotiate amendments had failed for a period of not less than 60 days. Then, and only then, could either party terminate the contract and then only by resorting to the provisions with reference to notice and a waiting period of 60 days.

We note that the Supreme Court of Arkansas, in referring to the same striking employees and the same contract here involved, said in *Lion Oil Co. v. Marsh*, 249 S.W.2d 569, 571:

"*Agreement in Force.* It can hardly be disputed that the agreement referred to above was in full

force when the strike and picketing occurred, as a casual reading of Article I set out above will show. Appellees (union member employees) could have easily effected a legal cancellation of the contract by giving the notice provided for therein, but the record does not show this notice was given. Since the terms of the agreement provided for an automatic continuation after October 23rd, 1951 the burden was on appellees to show they had terminated the agreement by giving the required notice; but this burden has not been met. * * *

We thus had in existence on April 30, 1952 a collective bargaining contract, binding upon the Company and the Union, indefinite as to time but terminable by either party upon 60 days' notice. The Board would disregard the separate provisions in the contract with reference to *termination* as distinguished from *amendment*. In interpretation, contracts, whether labor or otherwise, are entitled to their plain, ordinary meaning. The intent of the parties to the contract appears obvious—a fixed status quo for a period of one year; the possibility of bilateral action to amend after the expiration of the first ten months, and, thereafter, a period of 60 days for negotiation; and the possibility of unilateral termination by either party after the expiration of the one year and upon the giving of 60 days' notice thereafter. They would not have had to so contract. The point is that they did and the contract is binding upon both and continues after the fixed period of one year for an indefinite

time unless terminated by either party thereafter, in accordance with the provisions relating to *termination*.

There being in existence at the time of the strike a collective bargaining agreement between the Company and the Union, the situation is not too dissimilar to that presented in *Local No. 3, United Packinghouse Workers of America, CIO v. National Labor Relations Board, et al.*, 210 F.2d 325; in which this court said at pages 332 and 333:

"The strike was not called until after sixty days after the giving of the required notice. However, the expiration date of the collective bargaining contract between the company and the union expired later and hence it is argued that no strike could properly be called until after the expiration date of the contract. The Board strenuously argues that so construing the statute would to a considerable extent be destructive of its purpose. It is urged that so construed there could be no strike during the life of the contract between the employer and the union. That argument we think a very proper one to be addressed to the Congress and apparently it was urged upon Congress.

* * * * *

We are of the view that by going out on strike before the expiration date of the collective bargaining contract the employees lost their status as employees of the company and hence they were not entitled to re-employment as a matter of right."

We have here in the instant case a situation where the Union and the Company sought industrial peace through a collective bargaining agreement providing for a period of negotiation after notice of a desire to *amend* and a waiting period after notice of *termination* which could only follow failure to agree. The Board's decision would read out or ignore that part of the agreement dealing with notice of *termination* and the 60 days' waiting period to follow. That may not be done. The parties had a right to contract as they did and the plain provisions of their mutual agreement should be enforced.

At the time of the strike in question there existed a binding contract between the Union and the Company. It had not been terminated in accordance with its provisions. The strike was accordingly in violation of Section 8(d) and the strikers lost their status as employees of the Company and are not entitled to the relief provided in the Board's order.

The request of the Board for enforcement of its order is denied, and the order is set aside.

A true copy.

Attest:

E. E. KOCH,

Clerk, U. S. Court of Appeals, Eighth Circuit.

(Decree.)

UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

No. 15158

September Term, 1954

Friday, April 22, 1955.

LION OIL COMPANY, PETITIONER

vs. }

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review and Set Aside Order of the
National Labor Relations Board

This Matter came on to be heard on the petition of the Lion Oil Company to review and set aside the Order of the National Labor Relations Board issued August 5, 1954, and on the response of said Labor Board requesting entry of a Decree denying the petition and enforcing its Order, and was argued by counsel.

On Consideration Whereof, It is now here Ordered, Adjudged and Decreed by this Court that the Petition to set aside the Order of the National Labor Relations Board in this matter be, and it is hereby, granted, and the Order is set aside. The request of said Board for enforcement of its Order is hereby denied.

APRIL 22, 1955.

APPENDIX B

The relevant provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., 151 *et seq.*), is as follows:

Sec. 8(d). For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

“(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

“(2) offers to meet and confer with the other party for the purpose of negotiating a new

contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-

day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

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No. 4

In the Supreme Court of the United States

OCTOBER TERM, 1956

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

**LION OIL COMPANY AND MONSANTO CHEMICAL
COMPANY**

**ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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INDEX

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	3
Statement	3
A. The Board's findings of fact	3
B. The Board's conclusions and order	7
C. The decision below	10
Summary of Argument	12
Argument	17
I. Section 8(d) of the National Labor Relations Act does not forbid a strike, during the term of a contract, in support of contract modifi- cations following the date provided by the contract for the negotiation of such modifi- cations	17
A. The meaning of "expiration date" as determined from its statutory context	22
B. The meaning of "expiration date" as de- termined from the legislative purpose of Section 8(d)	28
C. The right to strike for contract changes under a reopening clause is indispen- sable to the principles of collective bar- gaining embodied in Section 8(d)	35
D. The interpretation of Section 8(d) adopt- ed by the Board's majority is preferable to either of the separate interpretations advanced in the concurring and dis- senting opinions	43
II. Respondent's alternative contention, that the strike in this case violated the existing contract, is without merit	47
Conclusion	53

CITATIONS

Cases:

<i>Amalgamated Association v. W. E. R. B.</i> , 340 U. S. 383	39
<i>American Newspaper Publishers Association v. National Labor Relations Board</i> , 345 U. S. 100	33
<i>Bayonne Textile Corp. v. American Federation of Silk Workers</i> , 116 N. J. Eq. 146, 172 Atl. 551	40
<i>J. I. Case Co. v. National Labor Relations Board</i> , 321 U. S. 332	52
<i>International Union of Operating Engineers, Local No. 181 v. Dahlem Const. Co.</i> , 193 F. 2d 470	32
<i>Hazel-Atlas Glass Co. v. National Labor Relations Board</i> , 127 F. 2d 109	51
<i>Local No. 8, United Packinghouse Workers of America v. National Labor Relations Board</i> , 210 F. 2d 325, certiorari denied, 348 U. S. 822	11, 34, 35
<i>Mastro Plastics Corporation v. National Labor Relations Board</i> , 350 U. S. 270	12, 14, 21, 23, 29, 42, 47
<i>Medo Photo Supply Co. v. National Labor Relations Board</i> , 321 U. S. 678	52
<i>National Labor Relations Board v. Alabama Marble Co.</i> , 185 F. 2d 1022, certiorari denied, 342 U. S. 823, enforcing 83 NLRB 1047	51
<i>National Labor Relations Board v. Aladdin Industries</i> , 125 F. 2d 377, certiorari denied, 316 U. S. 706	51
<i>National Labor Relations Board v. American Mfg. Co.</i> , 106 F. 2d 61, aff'd as modified, 309 U. S. 629	52
<i>National Labor Relations Board v. American National Insurance Co.</i> , 343 U. S. 395	42
<i>National Labor Relations Board v. E. A. Laboratories, Inc.</i> , 188 F. 2d 885, certiorari denied, 342 U. S. 871	51
<i>National Labor Relations Board v. Highland Shoe, Inc.</i> , 119 F. 2d 218	50

Cases—Continued

	Page
<i>National Labor Relations Board v. International Rice Milling Co.</i> , 341 U. S. 665.....	39
<i>National Labor Relations Board v. Jacobs Mfg. Co.</i> , 196 F. 2d 680.....	29
<i>National Labor Relations Board v. Kaiser Aluminum & Chemical Corp.</i> , 217 F. 2d 366.....	51
<i>National Labor Relations Board v. Mackay Radio & Telegraph Co.</i> , 304 U. S. 333.....	36
<i>National Labor Relations Board v. Mt. Clemens Pottery Co.</i> , 147 F. 2d 262.....	51
<i>National Labor Relations Board v. Reed & Prince Mfg. Co.</i> , 118 F. 2d 874, certiorari denied, 313 U. S. 595.....	50
<i>National Labor Relations Board v. Sands Manufacturing Co.</i> , 306 U. S. 332.....	17, 48, 49, 50
<i>National Labor Relations Board v. Spiewak</i> , 179 F. 2d 695.....	51
<i>National Labor Relations Board v. Swift & Co.</i> , 129 F. 2d 222.....	52
<i>National Labor Relations Board v. Wallick</i> , 198 F. 2d 477.....	51
<i>Pampanga Mills v. Trinidad</i> , 279 U. S. 211.....	26
<i>Pickett v. United States</i> , 216 U. S. 456.....	28
<i>Puerto Rico v. Shell Co.</i> , 302 U. S. 253.....	27
<i>Snively Groves, Inc.</i> , 109 NLRB 1394.....	28
<i>Telegraphers v. Railway Express Agency</i> , 321 U. S. 342.....	42
<i>U.A.W. v. O'Brien</i> , 339 U. S. 454.....	36, 39
<i>United Electrical Workers v. National Labor Relations Board</i> , 223 F. 2d 338, certiorari denied, 350 U. S. 981.....	51, 52
<i>United Mine Workers v. Arkansas Oak Flooring</i> , 351 U. S. at 75.....	32, 36
<i>Wagner Iron Works v. National Labor Relations Board</i> , 220 F. 2d 126, certiorari denied, 350 U. S. 981.....	19
<i>Wilson & Co. v. National Labor Relations Board</i> , 210 F. 2d 325.....	31, 32
<i>Wilson & Co.</i> , 89 NLRB 310.....	9

IV

Statutes:

Page

National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*):

Section 7-----	10
Section 8 (a) (1)-----	52
Section 8 (a) (3)-----	52
Section 8 (a) (5)-----	52, 54
Section 8 (d)-----	9,
10, 13, 14, 16, 17-21, 23, 24, 25, 26, 27, 28,	
30, 31, 34, 35, 38, 42, 43, 44, 47, 52, 54.	
Section 8 (d) (1)-----	9,
12, 13, 19, 22, 23, 24, 26, 28, 33, 55	
Section 8 (d) (2)-----	9, 19, 24, 55
Section 8 (d) (3)-----	4, 19, 24, 55
Section 8 (d) (4)-----	9,
12, 13, 19, 20, 22, 23, 24, 26, 28, 29, 31, 34, 55	
Section 10 (e)-----	2

Miscellaneous:

Basic Patterns in Union Contracts, Bureau of National Affairs, Collective Bargaining Service, 15: 325-326; 36: 301-302-----	42
Chamberlain, N. W., Collective Bargaining Procedures (Am. Council of Pub. Aff., 1944) p. 123-----	37
Collective Bargaining (McGraw-Hill, 1951), pp. 237-238-----	37
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54 Col. L. Rev. 1006-----	21
H. Conf. Rep. 510, 80th Cong., 1st Sess., pp. 41-42-----	32
H. Conf. Rep. 510, 80th Cong., 1st Sess., at pp. 34-35-----	25
93 Cong. Rec. 3835-----	39
93 Cong. Rec. 5014-----	26, 31
93 Cong. Rec. 6443-----	32
93 Cong. Rec. 7530-----	31
95 Cong. Rec. 8717-----	34

Miscellaneous—Continued

	Page
44 Geo. L. J. 447-----	21
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68 Harv. L. Rev. 720, 722-----	21, 38
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Memorandum dated March 11, 1935 (reprinted in Leg. Hist. of the National Labor Relations Act of 1935, Vol. I, pp. 1319, 1344, 1346-----	40
46 Mich. L. Rev. 995, 999-----	51
Miller, G. W., Problems of Labor (Macmillan, 1951), pp. 458-459-----	37
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Personnel Management, Labor Policy and Prac- tice: Strikes and Lockouts, Bureau of National Affairs, 255: 181-----	42
Rosenfarb, J., The National Labor Policy (Har- per, 1940), p. 40-----	37
S. 1958, 74th Cong., 1st Sess-----	40
S. 2926, 73rd Cong., 2d Sess-----	40
S. Min. Rep. No. 99, Pt. 2, 81st Cong., 1st Sess., p. 42-----	34
S. Rep. No. 105, 80th Cong., 1st Sess., pp. 15-16--	32
S. Rep. No. 105, 80th Cong., 1st Sess., p. 23-----	25
S. Rep. No. 105, 80th Cong., 1st Sess., at p. 24-----	25, 30
S. Rep. under S. Res. 71, 82nd Cong., 1st Sess., Factors in Successful Collective Bargaining [Comm. Print], pp. 6-7-----	36
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Miscellaneous—Continued

	Page
22 George Wash. L. Rev. 248, 250-----	51
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63 Yale L. J. 1186, 1191, 1195-----	51
64 Yale L. J., 248, 252, 256-----	21, 28, 35, 38

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No. 4

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LION OIL COMPANY AND MONSANTO CHEMICAL
COMPANY¹

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 249-255) is reported at 221 F. 2d 231. The findings of fact, conclusions of law, and order of the Board (R. 145-187, 205-219) are reported at 109 NLRB. 680.

JURISDICTION

The decree of the court below (R. 255-256) was entered on April 22, 1955. The petition for a writ of certiorari was filed on July 15, 1955,

¹ On June 11, 1956, this Court entered an order joining Monsanto Chemical Company as a party respondent in these proceedings in view of Lion Oil's merger into that company.

and granted on March 12, 1956 (R. 256). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1) and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Section 8 (d) (4) of the National Labor Relations Act, as amended, provides that a party who wishes to modify or terminate a collective bargaining contract must "continue * * * in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice [of his wish to modify or terminate] is given or until the expiration date of such contract, whichever occurs later."

The question presented is whether the requirement of this Section is satisfied where a contract provides for negotiation and adoption of modifications at an intermediate date during its term, and a strike in support of modification demands occurs after the date on which such modifications may become effective—and after the 60-day notice period has elapsed—but prior to the terminal date of the contract.²

² The question stated in the text is the only one presented for review by our petition for certiorari. However, respondent Lion Oil Company argued in the court below, and suggested in its brief opposing certiorari (p. 4), that the Board's order was erroneous because the strike involved was violative of its collective bargaining agreement with the Union. We discuss this alternative contention at pp. 47-52., *infra*.

3

STATUTE INVOLVED

The statutory provision principally involved, Section 8 (d) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), appears in the Appendix, *infra*, pp. 54-56.

STATEMENT

A. The Board's findings of fact

Lion Oil Company and the Oil Workers International Union, CIO, bargained together and entered into a series of collective agreements during the years following 1944, when the Union was certified by the Board as the representative of the Company's employees (R. 148). The agreement involved in the present controversy, effective October 23, 1950, provided in pertinent part as follows (R. 28-29):

This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt

of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the sub-section immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective.

On August 24, 1951, in accordance with the foregoing contract provision, the Union served written notice on the Company of its "desire to modify the collective bargaining contract" then in effect (R. 150; 81-82). Copies of the notice were sent to the Federal Mediation and Conciliation Service and the State Labor Commissioner of Arkansas for the express purpose of conforming with the requirements of Section 8 (d) (3) of the Act (R. 150; 81-82, 102).³

³ Section 8 (d) (3), which appears in full in the Appendix, *infra*, p. 55, provides that, in fulfillment of the statutory duty to bargain collectively, an employer or labor union desiring to modify or terminate an existing contract must, after giving notice of this desire to the other party, notify "the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith [notify] any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time."

The Union attached to its notice a list of "some of the proposed changes" it wished to negotiate in the existing contract (R. 150; 82-94). These proposals dealt with (1) modifications in the details of the existing contract clauses covering, *inter alia*, grievance procedure, work classification and seniority, (2) an increase in wage rates and liberalization of existing employee benefits, and (3) a suggested employee savings plan (*ibid.*). Negotiations began in August, shortly after the Union served its notice, and continued through the fall and winter (R. 150-151, 167-168, 15-16). Neither party notified the other, following October 23, 1951, when the contract became subject to termination, that it wished to end the contract (R. 150; 24). On February 14, 1952, however, no agreement having been reached, the employees voted to strike in support of the contract modifications which had been proposed by the Union and rejected by the Company (R. 150-151; 102-103). The proposed strike was originally set for March 3, 1952, and the Company was given notice accordingly. Negotiations continued, however, and in the hope that agreement would be reached, the strike was postponed three times before it finally went into effect on April 30, 1952 (R. 151; 16, 103-104, 106-107). When the strike began, the bargaining issues had narrowed, disagreement remaining principally with respect to wages, a no-strike clause, and a provision for a money

6
payment in lieu of notice when layoffs were made (R. 168-169; 106-107).

The strike was supported by all rank-and-file employees, but the Company continued to operate part of its plant with supervisory, clerical, and technical personnel (R. 151; 21, 139-140). No attempt was made to replace the strikers with new employees. Throughout the strike the Union and the Company continued negotiations, frequently with the help of the Federal Conciliation Service, looking toward agreement for amending the contract and settling the strike (R. 167-168, 170; 16).

Following several weeks of the strike during which no apparent progress was made toward settling the strike issues, the Union, at a meeting with the Company on June 21, 1952, announced that it "was offering to return all the strikers unconditionally, and wanted to know what schedule they should report on with no strings attached" (R. 153, 155; 134, 128, 110, 144, 94-95). The Company declined the offer, however, and took the position that the employees could not return to work until the Company's contractual terms were met (R. 153-155; 99-100; 111, 134, 18).

In accordance with the Union's offer to end the strike, large numbers of the employees applied both singly and in groups at the plant gate or by telephone for reemployment (R. 156; 116, 120-121). The plant superintendent interviewed many of the applicants, and rehired some upon

condition, individually assented to by those who were reinstated, that each would "continue to come to work daily and continuously throughout the period of the remainder of the strike" and would not honor any picket line at the Company's plant (R. 216; 120, 122, 123, 18-19).

Negotiations for a modified contract continued after June 21 as before (R. 173, 176; 115, 135-138). . . During July, however, as the parties progressed toward agreement, the Company announced that its execution of a new contract would be conditioned on withdrawal by the Union of the unfair labor practice charge in this case (R. 175-176; 130-132, 135-137). The Company receded from this position on July 30, and shortly thereafter, on August 3, 1952, accord was finally reached on all disputed issues and the agreement was formally executed (R. 176-177; 115-116). The Company's employees were reinstated the following day, and the plant resumed full production soon thereafter (*ibid.*).

B. The Board's conclusions and order

The Board concluded upon the foregoing facts that the Company had violated Section 8 (a) (1), (3) and (5) of the Act when "it rejected the Union's attempts to get the strikers back to work, but at the same time individually interviewed the strikers and reinstated them upon their assurance that they would not strike" (R. 216-217). This conduct, in the Board's view, "required em-

employees, as a condition of employment, to give up their adherence to the Union as their bargaining representative" and to deal with the Company as individuals; accordingly, it constituted both discrimination "violative of the Act, as to the strikers who continued to adhere to the lawful bargaining position of their statutory representative" (*ibid.*), and a refusal to accord full recognition to the Union as the employees' bargaining representative, as required by the Act. In addition, the Board concluded that the Company's conditioning of the execution of a contract upon the withdrawal by the Union of an unfair labor practice charge filed with the Board constituted a refusal to bargain in good faith, in violation of Section 8 (a) (5) of the Act (R. 217).

In reaching these conclusions, the Board rejected the Company's defense that the strikers had lost their status as employees and the protection of the Act because they had struck while a contract was in effect and therefore in contravention of the requirement of Section 8 (d) of the Act that no strike in support of contract modifications take place "for a period of sixty days after * * * notice [of the proposed modifications] or until the expiration date of [the existing] contract, whichever occurs later." The Board determined that the "expiration date" of a contract, as the term is used in Section 8 (d), comprehends "an agreed date in the course of

[the contract's] existence when the parties can effect changes in its provisions" (R. 211). Since in this case the contract was open to modification on October 23, 1951, and since the Union gave notice of a desire to negotiate modifications precisely 60 days before that time, and did not strike until several months thereafter, the Board concluded that the requirements of Section 8 (d) had been satisfied, so that the striking employees had not lost their protected status as employees under the Act.*

To remedy the unfair labor practices thus found, the Board's order (R. 217-219) requires the Company to cease and desist from discouraging membership in the Union by discriminatorily refusing to reinstate its employees, from refusing

* Two Board members stated differing views of the meaning of Section 8 (d) in separate opinions. Member Peterson, concurring with the majority in result, adopted the earlier view of the Board that Section 8 (d) permitted strikes in support of contract changes at any time during a contract after 60 days' notice (R. 219-222). See *Wilson & Co.*, 89 NLRB 310. Member Murdock dissented (R. 222-238). In his view, Section 8 (d) is applicable only during the period around the termination of a contract. Accordingly, he concluded in this case that since the contract at the time of the strike was terminable by either party, Section 8 (d) (4) required fulfillment at that time of the procedures outlined in Section 8 (d) (1) through (3) before a strike could lawfully be called. Finding that the Union had failed to give the notices there required when it decided to strike, Member Murdock concluded that the strike was forbidden by Section 8 (d), and that the strikers therefore lost their protected status under the Act. These views are discussed *infra*, pp. 43-47.

to bargain with the Union as the representative of its employees, and from in any other manner interfering with its employees in the exercise of the rights guaranteed them in Section 7 of the Act. Affirmatively, the Board's order requires the Company to make whole its employees who were refused reinstatement for any loss of pay suffered by reason of the discrimination against them, and, to post appropriate notices.

C. The decision below

The court below did not reach the merits of the Board's unfair labor practice findings. In its view, the strike failed to satisfy the requirements of Section 8 (d), with the consequence, as provided in that Section, that the strikers lost their status as employees under the Act and therefore the protection otherwise afforded them against the unfair labor practices of which they complain (R. 253-255).

The court emphasized that the 60 days' notice given by the Union (on August 24, 1951) of its desire to modify the existing contract did not have the effect of terminating the contract. According to the court, and in this respect the Board decision was in full agreement, the contract by its terms became one of indefinite duration following the lapse of the 60-day notice period on October 23, 1951, and was in full effect

at the time of the strike. Turning, then, to the application of Section 8 (d), the court rejected the construction given that provision by the Board; instead, it read the statutory language to prohibit strikes during the life of a contract regardless of any reopening provision of the contract. To reach this conclusion, the court construed the phrase "expiration date" in Section 8 (d) to be synonymous with "termination date." The construction thus given Section 8 (d) was the one given by the same court in *Local No. 3, United Packinghouse Workers of America v. National Labor Relations Board*, 210 F. 2d 325, certiorari denied, 348 U. S. 822, which was relied upon in the opinion in this case. Since it was clear that ~~the~~ contract in the present case had not terminated, it followed from the court's reasoning that the strike fell within the ban of Section 8 (d), and that the strikers therefore lost the protection which they would otherwise have enjoyed under the Act against the commission of unfair labor practices by their employer.

Having ruled that the strikers were excluded by Section 8 (d) from the protection of the Act, the court below did not have occasion to treat the Company's alternative contention that, irrespective of Section 8 (d), the strike was in breach of the existing collective bargaining agreement, and thus the strikers were not entitled to reinstatement.

SUMMARY OF ARGUMENT

I

It is the Board's position that the prohibition contained in Section 8 (d) (4) against strikes for contract changes "for a period of sixty days after such notice [of the proposed changes] is given or until the expiration date of such contract, whichever occurs later," does not illegalize such strikes during the term of a contract where (1) the date provided by the contract for its modification has lapsed and (2) the notice and waiting provisions have been satisfied prior to that date. In holding to the contrary, that the phrase "expiration date" in this section precludes strikes until an existing contract has in fact ended, irrespective of whether the contract contains a provision for mid-term amendment, the court below adopts a narrowly literal construction which is out of keeping both with the usage of the same phrase in other parts of the same statutory provision and with the Congressional purpose in enacting Section 8 (d). Moreover, the lower court's interpretation is productive of "incongruous results," which, as this Court has recently warned, are to be avoided in determining the meaning of Section 8 (d). *Mastro Plastics Corporation v. National Labor Relations Board*, 350 U. S. 270, 286.

A. The term "expiration date," following which the ban against strikes in Section 8 (d) (4) is lifted, is used in Section 8 (d) (1) in a

context that makes clear that it encompasses a date provided by a contract for modifications to be made effective during its term. Thus, in Section 8 (d) (1) this phrase describes the date before which the 60-day notice period is measured. Where a party wishes to modify a contract pursuant to a reopening clause, this phrase requires notice to be given 60 days before the proposed modifications may become effective, not 60 days before the termination of the contract. That the notice under Section 8 (d) (1), required 60 days before the "expiration date," applies to proposed contract amendments to be made during the contract term is shown by the statutory wording, its purpose and its legislative history.

Recurrence of the identical phrase "expiration date" in Section 8 (d) (4) should require that the same meaning be given it which it has in the earlier subsection of the same statutory provision. And applying that meaning in this case, the ban against strikes until after the "expiration date" of the existing contract between the Union and the Company did not illegalize the Union's strike here. For the Union gave the required notice 60 days before the date upon which modifications could be made effective under the contract, and the strike occurred long after that date.

B. Section 8 (d), which represents a Congressional effort "to bring about the termination and modification of collective bargaining agreements"

without [strikes]," must be read in the light of the coordinate Congressional purpose "to insure freedom of concerted action by employees at all times." *Mastro Plastics Corporation v. National Labor Relations Board*, 350 U. S. 270, 284. In this light, it is apparent that the purpose of this Section was not to outlaw generally strikes in support of contract changes, but to ban them only during periods governed by contractual provisions or during which the 60-day notice and negotiation provisions are applicable. Although the question was not specifically considered in the committee reports or the Congressional debates pertaining to Section 8 (d), the references which are there made to the restricted character of its strike prohibition appear to assume that strikes would be permitted after the expiration of the period during which negotiations are required under a reopening clause. Moreover, the Joint Committee, established to study the operation of the Act, made clear in its report filed in 1948 that it was the intent of Congress to permit such strikes, and recommended that Section 8 (d) be amended to remove any ambiguity in this respect. Similarly, Senator Taft in 1949 proposed a clarifying amendment to the same effect, not to make any substantive change, but because he feared that the Congressional intent was "not clear that a strike after 60 days' notice under an annual reopening clause of a contract running for more than one year would not constitute a violation."

C. In requiring notice and negotiations with respect to proposed contract modifications to be made effective during the contract term, Congress intended to make applicable the normal principles of collective bargaining adopted by the Act. It has long been recognized by the courts that the right to strike in support of contract proposals is indispensable to the practice of collective bargaining which Congress has required in the Act, and specifically in Section 8 (d) with respect to mid-term contract modifications. To outlaw strikes in such bargaining negotiations, which the court below construes Section 8 (d) to have done, would thus subvert the very principle which that Section purports to implement. The Board's reading of Section 8 (d), on the other hand, fully harmonizes the right to strike with the Act's regulation of the bargaining relationship. Strikes are curtailed only during the periods in a contract when modifications may not be made, and are permissible, after the 60-day waiting period, when renegotiation is appropriate and bargaining is mandatory.

D. Not a single member of the Board accepted the interpretation of Section 8 (d) announced by the court below. However, the Board was not unanimous. There was a concurring opinion (Member Peterson) and a dissent (Member Murdock), both of which would construe Section 8 (d) as being in general less restrictive of the right to strike than it is under the majority's in-

terpretation, and *a fortiori* less restrictive than it is as read by the court below. We believe that neither of these alternatives fully explains the statutory language or effectuates the legislative purpose. The suggestion in the concurring opinion that Section 8 (d) requires only a 60-day notice and negotiation period before a strike may be called fails to explain the "whichever is later" phrase in cases where the notice is given more than 60 days prior to the modification or termination date of the contract. The dissenting view, limiting the application of Section 8 (d) to periods around the end of the contract term, gives no effect to the language showing that the 60-day notice and its concomitant strike ban was designed to apply when reopening and modification was contemplated by the contract as well as during the period immediately preceding the termination date.

II

The court below did not reach the Company's alternative contention that, apart from Section 8 (d), the strike in this case was in breach of the existing contract and that the employees were therefore not entitled to the Act's protection against unfair labor practices. This argument is without merit. The strike was not in violation of the contract, which contained no agreement not to strike. Whatever implied obligation there may be not to strike against the continued

enforcement of existing contract terms (*National Labor Relations Board v. Sands Manufacturing Co.*, 306 U. S. 332), that obligation does not extend to a strike, like the one here, in support of contract changes at a time when the contract specifically provides that such changes may be made.

ARGUMENT

I

SECTION 8 (D) OF THE NATIONAL LABOR RELATIONS ACT DOES NOT FORBID A STRIKE, DURING THE TERM OF A CONTRACT, IN SUPPORT OF CONTRACT MODIFICATIONS FOLLOWING THE DATE PROVIDED BY THE CONTRACT FOR THE NEGOTIATION OF SUCH MODIFICATIONS

It is not disputed that the strike which began on April 30, 1952, occurred at a time when a collective bargaining contract was in effect between the Company and the Union. The contract conditioned its termination upon 60 days' notice following October 23, 1951, and since neither party gave such notice, the contract thereafter became one of indefinite duration and remained in effect when the Union struck. The contract also provided, however, for reopening during its term for the purpose of modifying its provisions on or after October 23, 1951, and it was in support of the Union's proposals for such modifications that the strike was finally called after lengthy negotiations had failed to produce agreement.

The relevant portions of Section 8, (d), by which the legality of a strike in these circumstances is to be determined, are as follows:

* * * where there is in effect a collective bargaining contract * * * no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modification;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of

such contract, whichever occurs later * * *

Section 8 (d) further provides that—

Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute for the purposes of Sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

The foregoing provisions were designed to provide “an orderly method for the modification or termination of existing agreements by prescribing, during the sixty day cooling off period, strikes which interfere with the operation of the statutory method, *i. e.*, strikes to compel termination of the agreement or modification of its terms.” *Wagner Iron Works v. National Labor Relations Board*, 220 F. 2d 126, 141 (C. A. 7), certiorari denied, 350 U. S. 981.

On August 24, 1951, when the Union, in conformity with the existing contract, served notice upon the Company that it wished to modify some of the contract terms, it also notified the federal and state mediation and conciliation services, and at once undertook negotiations with the Company with respect to its proposals, thus satisfying the requirements of Section 8 (d) (1), (2), and (3), *supra*. The further requirement of Section 8 (d) (4)—that no strike be called “for a period

A. The meaning of "expiration date" as determined from its statutory context

A significant guide to the meaning of the phrase "expiration date" in Section 8 (d) (4) is the usage of the identical phrase in Section 8 (d) (1), in a context that leaves no doubt as to the scope of its reference. Section 8 (d) (1) (*supra*, p. 18) requires a party to a contract who, like the Union in this case, wishes to modify its terms, to serve "written notice upon the other party to the contract of the proposed * * * modification sixty days prior to the *expiration date* thereof" (emphasis added). Under Section 8 (d) (1) this notice requirement applies where, as here, a contract is sought to be modified during its term, as well as ~~where~~ a contract is sought to be terminated and a new contract negotiated. See pp. 23-26, *infra*. It seems clear, therefore, that in the former situation Section 8 (d) (1) refers to the 60-day period before the date on which the reopening clause provides for modifications to be put into effect.

For example, in the case of a two-year contract subject to reopening at the end of a year, the "expiration date" by which the notice requirement of Section 8 (d) (1) is measured necessarily includes the date at the end of the first year on which contract changes may be made; were "expiration date" to refer solely to the termination date of the two-year contract, in conformity with the meaning given by the court below to

the same phrase when used in Section 8 (d) (4), notice would be required some ten full months *after* modifications were intended to be made effective. Section 8 (d) may not be read to produce such an "incongruous effect." *Mastro Plastics* case, 350 U. S. at 286.

Similarly, in the contract in this case, the "expiration date," 60 days before which the parties were required by Section 8 (d) (1) to give notice of an intent to modify the contract during its term, pursuant to the contract modification clause, was October 23, 1951, some six months prior to the strike. This is not to say that the term "expiration date" does not refer also to the termination date of a contract, but rather that it refers in addition to the date on which the parties have agreed that either some or all of the terms of an existing contract may expire and be replaced by other terms.*

The validity of our assumption that the Section 8 (d) requirements apply to negotiations for modifications during the contract term as well as to negotiations leading to termination of the contract has been attested by this Court. In *Mastro Plastics Corp. v. National Labor Relations Board*, *supra*, 350 U. S. at 286, the Court stated

* It should be observed that Section 8 (d) does not permit a shortening of the sixty-day "cooling-off" period by giving notice less than 60 days before the termination or modification date of a contract. Strikes are in any event suspended for 60 days following notice, and, of course, may be barred for a longer period if the "expiration date" *** occurs later."

that Section 8 (d) was applicable where there is a "request to modify the contract," and it is well known that parties' to collective bargaining agreements frequently provide for such modifications to be made during the term of a contract. See pp. 41-42, *infra*.

The correctness of the Court's observation is demonstrable in a number of ways. Thus, the language of Section 8 (d) itself repeatedly makes clear, in the introductory sentence to the proviso and in both subsections (1) and (2), that the procedures there described are prerequisites to contract "termination or *modification*" (emphasis added). Similarly, the last paragraph of Section 8 (d) provides that subsections (2), (3) and (4) do not mean that parties need discuss "any *modification* of the [contract's] terms * * * if such *modification* is to become effective before such terms * * * can be reopened under the provisions of the contract" (emphasis added). By the same token, the duty to bargain, and the corollary power to strike, clearly subsist when the contract provides for reopening and modification during its term.⁷ Moreover, subsection 3

⁷ It bears emphasis that an agreed date in a collective bargaining agreement on which modifications may be sought is a familiar and highly meaningful provision of such agreements. It is clear, of course, as a matter of general contract law, that both parties to an agreement may agree to modifications at any time. Under the National Labor Relations Act, however, there is a duty to bargain collectively during the term of a contract when the terms "can

provides for notice of any contract dispute to federal and state conciliation agencies. It seems reasonable to assume that Congress did not intend the procedures for effective mediation to apply only at termination, but rather intended them to apply whenever the terms of an agreement were subject to modification. Taken together, all of these provisions show that the requirements of Section 8 (d) apply where modifications are sought before the "termination" of the contract but in accordance with contract terms. Nothing in the statutory scheme points to the opposite conclusion.

Confirmation of this point is found in the legislative history of Section 8 (d). Both the House Conference Report⁸ and Senate Report⁹ state that the notice requirements were intended to be reopened under the provisions of the contract" (Section 8 (d), *supra*). Thus, at such times either party may require negotiations for contract changes even though the other party may prefer to continue the existing contract terms. As we show below (pp. 35-43), the Union's ability to strike is an essential ingredient of the bargaining process, long recognized as such by Congress. But under the decision below, even though the Act contemplates and requires bargaining when the contract terms permit reopening for modifications, the strike weapon is proscribed, not only for the unquestioned sixty-day "cooling off" period, but for an indefinite period beyond to the termination date of the contract. This incongruity, coupling the bargaining requirement with an insuperable barrier to effective bargaining, goes far to refute the conclusion of the court below and to sustain the contrary views of the Board.

⁸ H. Conf. Rep. No. 510, 80th Cong., 1st Sess., pp. 34-35.

⁹ S. Rep. No. 105, 80th Cong., 1st Sess., p. 24.

to apply where contract modifications were sought as well as where a contract was sought to be terminated. And consistent with these expressions, Senator Ball, a proponent of Section 8 (d), stated on the Senate floor that this provision "means giving at least 60 days' notice of the termination of the contract, *or of the desire for any change in it * * **" 93 Cong. Rec. 5014 (emphasis added)..

If, as we have shown, the phrase, "expiration date" as used in Section 8 (d) (1) refers, in situations where contract modification rather than termination is sought, to the date provided by the contract for modification, it scarcely can be given another meaning as applied in the identical situation where the question is whether the "expiration date" of the contract has passed so as to legitimize a strike under Section 8 (d) (4). Recurrence of the same phrase within the same statutory section normally requires identical construction. *Pampanga Mills v. Trinidad*, 279 U. S. 211, 218. Applying a consistent meaning to the term "expiration date" as it is used in Section 8 (d), it seems plain that the Union's strike was not forbidden by 8 (d) (4); the requirement that there be no strike for contract modifications until after the "expiration date" of the contract was fulfilled when the Union gave sixty days' notice before, and delayed its strike until after, October 23, 1951, the date upon which modifications could be made effective under the contract.

It should be added that the Board's construction of the term "expiration date"—to include an intermediate point during the life of a contract when, under its terms, it is open to renegotiation, as well as the time at which the contract terminates—is fully consistent with the differing, rather than interchangeable, uses of the terms "expiration" and "termination" throughout Section 8 (d). "Termination" is used exclusively in conjunction with "modification," in order to designate the two occasions with respect to which the requirements of Section 8 (d) are imposed. In fixing the time following which strikes may be called to support bargaining demands, however, the statute does not speak of the "termination" of the contract, which elsewhere has been specifically used to denote the end of the contract term; instead, the statute speaks of the "expiration date," which, as shown, is used elsewhere to denote both the date during the contract when it is subject to modification and the contract's terminal date. This significant difference is overlooked by the court below in giving a meaning to "expiration date" without regard to its statutory context. Cf. *Puerto Rico v. Shell Co.*, 302 U. S. 253, 258.

It may also be pointed out that to accept the interpretation of Section 8 (d) adopted by the court below would create a most anomalous situation in the application of that portion of Section 8 (d) which states that "Any employee who en-

gages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee * * *." The conclusion of the court below, that Section 8 (d) outlaws all strikes for contract changes during the life of a contract, would have to stand side by side with a provision which, if read literally, imposes penalties to enforce this general prohibition only where such a strike occurs during the sixty-day period following notice of an intent to terminate; under a literal interpretation, strikers either before or after such period would retain their employee status even though a contract was still in existence. But see *Snively Groves, Inc.*, 109 NLRB 1394; and see Note, 64 Yale L. J. 248, 251. Such an inconsistency between the substantive statutory provision and its sanction can be avoided only by adopting a more meaningful guide to Congressional intention than the literal meaning of words read in isolation from each other. Cf. *Pickett v. United States*, 216 U. S. 456, 461.

B. The meaning of "expiration date" as determined from the legislative purpose of Section 8 (d)

As we have shown, the term "expiration date" serves the coordinate purposes of (1) fixing the date for giving notice of a proposal either to terminate or to modify a contract (Section 8 (d) (1)), and (2) signifying the date after which there may be a strike in support of contract changes (Section 8 (d) (4)). These provisions reflect a Congressional effort to promote peaceful

renegotiation of contracts by restricting the statutory right to strike in support of contract demands "during this natural renegotiation period."

Mastro Plastics Corp. v. National Labor Relations Board, supra, 350 U. S. at 286. As stated by this Court (*id.*, at 284):

Here again the background is the dual purpose of the Act (1) to protect the right of employees to be free to take concerted action as provided in Sections 7 and 8 (a), and (2) to substitute collective bargaining for economic warfare in securing satisfactory wages, hours of work and employment conditions. Section 8 (d) seeks to bring about the termination and modification of collective-bargaining agreements without interrupting the flow of commerce or the production of goods, while §§ 7 and 8 (a) seek to insure freedom of concerted action by employees at all times.

Section 8 (d) thus makes no attempt to outlaw generally strikes in support of contract changes, the right to which action plays a recognized and indispensable role in collective bargaining (*infra*, pp. 35-43). But "once parties have stabilized their bargaining relationship by entering into a contract," it precludes such strikes until there have been sixty days of negotiations (R. 207-208). See *National Labor Relations Board v. Jacobs Mfg. Co.*, 196 F. 2d 680, 684 (C. A. 2). Specifically, then, the purpose of 8 (d) (4) was to ban strikes and lockouts only during the period when

contracts forbade either modification or termination. This purpose is fulfilled by reading the Section, as the Board does, to forbid strikes during periods governed by set contractual provisions, and to allow strikes, following notice and negotiations, during periods when changes may be effected under the contract.

To postulate more and outlaw all strikes during the term of a contract in support of contract changes, irrespective of the presence of a reopening clause, not only exceeds the plain purpose of Section 8 (d), but, as we show below, pp. 35-43, seriously derogates from the practice of collective bargaining as contemplated by the Act. Nothing in the legislative history of Section 8 (d) warrants such a result. Although neither the committee reports nor the Congressional debates pertaining to Section 8 (d) deal explicitly with the question of a strike resulting from a contract dispute arising out of a reopening provision, it appears to have been assumed that the ban against strikes would be lifted upon expiration of the period during which negotiations are required. Thus, the Senate Report describes the restriction on strikes contained in Section 8 (d), which originated in the Senate bill, as making it "an unfair labor practice by a union to strike before the expiration of the 60-day period." S. Rep. No. 105, 80th Cong., 1st Sess., p. 24. As we have shown (*supra*, pp. 25-26), and as the Senate Report itself makes clear, the 60-day notice provision is applicable to

clauses permitting "notice by either side of a desire to * * * modify" (*ibid.*), whether or not the contract remains in effect. Accordingly, the 60-day period following which the Senate Report assumes the existence of a right to strike may well lapse, as it did in this case, while the contract continues in existence. To the same effect as the Senate Report is the statement on the floor by Senator Ball, a leading proponent of Section 8 (d), that "ours is a very mild provision, which merely says to unions, 'You must have a 60-day reopening clause in your contract.'" 93 Cong. Rec. 7530. See also *id.*, 5014.

Senator Taft's remark on the floor of the Senate (R. 254-255), that the "waiting period" to strike under Section 8 (d) (4) was for "the life of the contract itself" (referred to in *Wilson & Co. v. National Labor Relations Board*, 210 F. 2d 325, which is relied upon and quoted in the opinion in this case (R. 254-255)), cannot be taken as evidence of an intent to outlaw a strike of the kind involved in this case. For the context of Senator Taft's statement makes clear that he was referring to the situation where notice to *terminate* is given at least 60 days "before the end of any contract," and not to notice given pursuant to a reopening clause permitting changes to be made during the life of a contract.¹⁰

¹⁰ The paragraph from the Senate Report, also quoted by the court below in the *Wilson* opinion, which stresses the importance to industrial peace of "assurance of unin-

Any doubt on this score is eliminated by later expressions from the Congress reflecting Senator Taft's and other highly authoritative views with respect to the specific problem here in question. In its final report, the Joint Committee on Labor Management Relations, of which Senator Taft was a member, considered the precise question presented in this case (S. Rept. No. 986, Pt. 3, 80th Cong., 2nd Sess., p. 62):

interrupted operation during the term of the agreement" (210 F. 2d at 332), likewise reveals no intent to prevent a strike for contract amendments pursuant to a reopening clause. For the Senate Report there addresses itself to the justification for Section 301, which provides a forum for enforcement of contracts, including, *inter alia*, no-strike clauses. S. Rep. No. 105, 80th Cong., 1st Sess., pp. 15-16. As the Court of Appeals for the Sixth Circuit has observed, "Congress considered breaches of labor contracts to be separate and distinct from unfair labor practices", and Section 301 was created for enforcement of a different policy from that reflected in Section 8 (d). *International Union of Operating Engineers Local No. 181 v. Dahlem Co.*, 193 F. 2d 470, 474. Indeed, the House and Senate Conferees rejected a provision of the Senate bill which would have made the violation of a bargaining agreement an unfair labor practice. H. Conf. Rep. No. 510, 80th Cong., 1st Sess., pp. 41-42. See also 93 Cong. Rec. 6443.

¹¹ This Committee was established by Section 401 of the Labor Management Relations Act, 1947, and was directed, *inter alia*, to study "the administration and operation of existing Federal laws relating to labor relations," and to report to the Senate and the House "the results of its study and investigation, together with such recommendations as to necessary legislation * * * as it may deem advisable." The Committee's report has been cited by this Court in *United Mine Workers v. Arkansas Oak Flooring*, 351 U. S. at 75, n. 14, and in *American News-*

Reading section 8 (d) as a whole seems to lead to the conclusion that the act permits a strike, after a 60-day notice, in the middle of a contract which authorizes a reopening on wages. Use of the words "or modify" and "or modification" in the proviso, and use of "or modification" in section 8 (d) (1), and the statement in the final paragraph of the section that the parties are not required to agree to any modification effective before the contract may be reopened under its terms, all seem to contemplate the right of either party to insist on changes in the contract if they have so provided. The right of the union would be an empty one without the right to strike after a 60-day notice.

Acknowledging, however, that the statutory words are "susceptible to opposing interpretation," and observing that the problem is "of extreme importance to both management and labor," the Joint Committee suggested clarifying language changes to make explicit the result it thought already contemplated by the Section. *Id.*, p. 63.

In the same vein, Senator Taft in 1949 proposed an amendment to Section 8 (d) which would have made explicit the application of its requirements to reopening clauses, and the right of unions to strike in support of their proposals for contract changes thereafter, even though the con-

of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later"—was also satisfied, in the Board's view, when the Union delayed its strike until both the 60-day period and the date (October 23, 1951) provided by the contract for modifications to become effective had passed, and extended negotiations had failed to bring agreement between the parties. The principal issue before this Court is the statutory construction on which this conclusion rests—specifically, the Board's reading of the limiting phrase "expiration date of such contract," prior to which Section 8 (d) (4) forbids strikes for contract modifications, to refer "not only to the terminal date of a bargaining contract, but also an agreed date [here October 23, 1951] in the course of its existence when the parties can effect changes in its provisions" (R. 211).

The decision below rests on the assumption that the statutory prohibition against strikes before the "expiration date" of a contract necessarily outlaws all strikes before the contract is in fact terminated, even where, as here, the contract provides for reopening and amendment during its term. This assumption presupposes a strictly literal identity between the terms "expiration" and "termination," without regard to the context in which the former term is used, the purpose of the provision in which it is found, or its evident meaning in other portions of the same Section. This Court has only recently pointed out, how-

ever, in holding that the unqualified usage of the word "strike" in Section 8 (d) could not be extended to include all strikes, that the "incongruous results" produced by a narrowly literal reading of that Section make such an approach an untrustworthy guide to Congressional meaning. *Mastro Plastics Corporation v. National Labor Relations Board*, 350 U. S. 270, 286. The unreliability of an attempt to follow a merely literal interpretation is emphasized in this case by the circumstance that the language now under consideration has been given not only the opposed meanings adopted by the Board and the court below, but totally different meaning as well. See fn. 4, *supra*, and pp. 43-47, *infra*. We do not believe it can be fairly said that any of these varying interpretations is wholly without support; it is undeniable that, as this Court observed in its treatment of the Section 8 (d) problem presented in the *Mastro Plastics* case, there is a measure of ambiguity in the statute. 350 U. S. at 287.⁵ For the reasons stated below, however, we believe the Board's reading in this case best coordinates the language of the various parts of Section 8 (d) into a consistent and meaningful whole, most accurately reflects the legislative purpose, and most easily accommodates the concept of collective bargaining adopted by the Act.

⁵ See, Note, *Section 8 (d) of Labor Management Relations Act as a Ban on Strikes Before Contract Termination*, 64 Yale L. J. 248; 68 Harv. L. Rev. 720; 54 Col. L. Rev. 1006; 44 Geo. L. J. 447.

tract remained in effect. S. Min. Rep. No. 99, Pt. 2, 81st Cong., 1st Sess., p. 42. Again, the amendment was offered not to change the intentment of the law, but because it was feared that the existing language did not unambiguously express that intent. As stated in the report supporting the proposed amendment, "it is not clear that a strike after 60 days' notice under an annual reopening clause of a contract running for more than 1 year would not constitute a violation * * * . [T]he amendment proposed below makes it clear that such a strike would not constitute an unfair labor practice." *Id.*, p. 27.¹²

In sum, in reading Section 8 (d) (4) to prohibit all bargaining strikes so long as a contract is in effect, the court below imposes restraints which authoritative Congressional sources have disclaimed and for which there is no support in the legislative history of Section 8 (d). The interpretation adopted by the court below fails to make the accommodation, which this Court has stated to be the purpose of Section 8 (d), between the right to strike for contract changes and the desired stability of a bargaining relationship.¹³

¹² This proposed amendment, along with a group of others, was passed by the Senate, but did not become law. 95 Cong. Rec. 8717.

¹³ "The Eighth Circuit's approach in *Packhouse Workers* [210 F. 2d 325, which that court followed in the instant case] threatens unfortunate results. Most collective bargaining contracts have provisions which permit amendment or reopening. Although a substantial majority of

C. The right to strike for contract changes under a reopening clause is indispensable to the principles of collective bargaining embodied in Section 8 (d)

Collective bargaining—"the performance of the mutual obligation of the employer and the representative of the employees to * * * confer" with a view to "the negotiation of an agreement" covering "wages, hours, and other terms and conditions of employment" (Section 8 (d))—cannot function in the absence of economic sanctions available to both parties. If one side of the bargaining table is unable to support its proposals and oppose the demands of the other by an effective threat of resort to economic power, it is evident that terms of employment will be established by fiat, not by bargaining. On the employer's side, economic power lies in his control of the business; in the last analysis, the existence of jobs and con-

these also contain some form of no-strike clause, almost all of them either expressly or impliedly allow the union to strike at the time of amending. *Packinghouse Workers*, by barring such strikes, destroys the effectiveness of these amending provisions. Unions may thus find themselves bound to unsatisfactory terms for much longer periods than they originally contemplated. Moreover, unions bargaining for new contracts will find long-term agreements much less satisfactory without adequate amending clauses. Rather than lose the right to strike during the course of a long agreement, many unions may bargain for short-term contracts or contracts of indefinite length, terminable upon sixty days' notice. These shorter and less secure agreements will frustrate rather than encourage the aims of uninterrupted operation and industrial stability to which the Eighth Circuit gave its approval." 64 Yale L. J. at 256 (footnotes omitted).

tinuance of operations depends on acceptance by the employees of wages and conditions to which he is agreeable. If his employees are unwilling to work on his terms he is free to replace them. *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333. On the union's side, the sanction behind its demands lies in the ability of the employees concertedly to withhold their labor—the statutorily recognized and protected power to strike. *United Mine Workers v. Arkansas Oak Flooring*, 351 U. S. 62; *U. A. W. v. O'Brien*, 339 U. S. 454, 456-457. As stated by the Senate Subcommittee on Labor and Labor Management Relations of the 82nd Congress (S. Rep. under S. Res. 71, 82nd Cong., 1st Sess., *Factors in Successful Collective Bargaining* [Comm. Print] pp. 6-7):

Looked at from the angle of the functioning of collective bargaining, the strike is the instrument which makes the parties give the greatest weight to their respective contentions in order to avoid the cost involved in a work stoppage. The strike threat, and the occasional strike itself, is the force depended upon to facilitate arriving at satisfactory settlements. Agreement normally is reached without a work stoppage because neither side wants to incur the cost of such stoppage and makes reasonable adjustments to avoid it.

Thus the strike threat and the actual strike itself are instruments of bargaining * * *.

* * * [R]eliance on collective bargaining means dependence on the possibility, even the imminence, of a strike in every collective-bargaining session. The calculation of the cost of a strike to the parties facilitates a meeting of minds without actual resort to the strike and thus performs a vital collective-bargaining function. But strikes do eventuate when the parties are willing to risk them under particular circumstances. The policy of collective bargaining then means the policy of permitting the parties "to wait it out," or as we sometimes say, "to fight it out," after negotiations across the conference table have ceased.

In one word, then, to abridge the right to strike in support of contract demands necessarily vitiates the practice of *bona fide* bargaining with respect to such demands.¹⁴ But this is precisely

¹⁴ See, e. g., Chamberlain, N. W., *Collective Bargaining Procedures* (Am. Council of Pub. Aff. 1944), p. 123, and *Collective Bargaining* (McGraw-Hill, 1951), pp. 237-238; Heron, *Beyond Collective Bargaining* (Stanford Univ. Press, 1948), pp. 24-31; Smith, L. J., *Collective Bargaining* (Prentice-Hall, 1946), p. 208; Miller, G. W., *Problems of Labor* (Macmillan, 1951), pp. 458-459; Warren & Bernstein, *Collective Bargaining* (Institute of Ind. Rel., Univ. of Calif., 1949), p. 27; Hartley, F. A., *Our New National Labor Policy* (Funk & Wagnalls, 1948), XIV; Isaacson, W. J., *Enforcement of Labor Agreements by Economic Action* (N. Y. Univ. 6th Annual Conf. on Labor, 1953), p. 71; Mathews, R. E., *Labor Relations and the Law* (Little-Brown, 1953), p. 563; Rosenfarb, J., *The National Labor Policy* (Harper, 1940), p. 40; Labor Committee of Twentieth Century Fund,

the result of the decision below. For, as we have noted (*supra*, pp. 23-26), Congress left no doubt in Section 8 (d) that, while bargaining may not be required at other times during the term of a contract, the duty to bargain collectively, with all that it implies, is in full force at any time when the contract provides for reopening as well as at the termination date. On either occasion, "proposed termination or modification," Congress required that the moving party give sixty days' notice and refrain from strikes or lock-outs during this period. Under the decision below, however, where such notice relates to proposed modifications, expiration of the sixty-day period means nothing; the ban on strikes or lock-outs continues until the termination date of the contract. The result is that the intended "cooling off" period of sixty days may be perpetuated for a wholly unintended period of a year or more in any given case,¹⁵ during which the bargaining

Striker and Democratic Government (20th Century Fund, 1947), pp. 13-14; note, 64 Yale L. J., 248, 252; note, 68 Harv. L. Rev. 720, 722; cf. Millis & Montgomery *Organized Labor* (McGraw-Hill, 1945), pp. 795-796.

¹⁵ While the termination date in the instant case could have been set by an additional sixty-day notice, agreements of two or more years in duration commonly provide for reopening for modifications at the end of the first year. See *infra*, p. 41. In such cases, the Union would give the required sixty-days' notice prior to the agreed modification date, but, under the decision below, would be precluded from striking until the contract's "termination" date, a year or more later.

process Congress — required — cannot, function effectively.

That Congress could have sought no such result is clear from the history of the 1947 amendments to the Act, which shows that when bargaining was contemplated and required, it was to be bargaining implemented by the long familiar weapons on both sides to which we have referred. In a statement three times recognized by this Court as an authoritative gloss on the Act (*Amalgamated Association v. WERB*, 340 U. S. 383, 395, n. 21; *U. A. W. v. O'Brien*, 339 U. S. 454, 457, n. 3; *National Labor Relations Board v. International Rice Milling Co.*, 341 U. S. 665, 673, n. 8), Senator Taft pointed out the interrelation between collective bargaining and the right to strike and the indispensability of the one to the other (93 Cong. Rec. 3835):

* * * the solution of our labor problems must rest on a free economy and on free collective bargaining. The bill is certainly based upon that proposition. That means that we recognize freedom to strike when the question involved is the improvement of wages, hours, and working conditions, when a contract has expired and neither side is bound by a contract. We recognize that right in spite of the inconvenience, and in some cases perhaps danger, to the people of the United States which may result from the exercise of such right * * *. So far as the bill is concerned, we have proceeded

on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours, and working conditions after proper opportunity for mediation.¹⁶

In a similar expression, the Senate Labor Committee, in a memorandum explaining the bill which subsequently became the Wagner Act, quoted with approval the following holding of the Court of Errors and Appeals of New Jersey in *Bayonne Textile Corp. v. American Federation of Silk Workers*, 116 N. J. Eq. 146, 172 Atl. 551, 554:¹⁷

The right to organize and bargain collectively connotes the right to strike in event that such course is deemed advisable by the employees for their mutual aid or protection. The latter is an incident of, and imparts efficacy to, the former. It can-

¹⁶ In view of the recognition here given by Senator Taft to the right to strike as an indispensable element of collective bargaining, it can scarcely be supposed that his reference to the exercise of that right when "a contract has expired and neither side is bound by a contract" was intended to imply a restriction on the right to strike in another set of circumstances, also contemplated by the Act as appropriate for bargaining, i. e., during negotiations over contract modifications pursuant to a reopening clause. See the further expressions of Senator Taft's views, quoted *supra*, pp. 33-34.

¹⁷ Memorandum dated March 11, 1935 (reprinted in *Legislative History of the National Labor Relations Act of 1935*, (Gov't Print. Off., 1949), vol. I, pp. 1319, 1344, 1346), comparing S. 2926, 73d Cong., 2nd Sess., with S. 1958, 74th Cong., 1st Sess.

not be that Congress intended to reserve the right of collective action, in respect of wages, and to deprive the employees of the only weapon at their command to make its exercise effective—a lawful weapon devised to secure the enforcement of a fundamental right. A construction that would deny, to the employees the privilege of striking, to enforce what they conceive to be a just demand for a wage increase, would emasculate and devitalize the clause conferring the right to organize and bargain collectively. The denial of this long-established fundamental right to strike would, in effect, compel acceptance of the scale of wages fixed by the employer.

The recognition thus given by Congress to the critical role played by the right to strike in the bargaining process does no more than reflect the widespread practice in collective agreements of making special provision for the exercise of that right in support of negotiations when the contract might otherwise infringe it. Thus, recent studies show that, in the large number of contracts which provide for mid-term negotiation of modifications,¹⁸ there “are almost always * * *

¹⁸ The most recent study made by the Bureau of Labor Statistics indicates that out of a total of more than 1,400 contracts analyzed, covering 8,168,300 employees, 28 percent, covering 3,159,400 employees, contained reopening clauses. *Collective Bargaining Activity in 1956: A timetable of Expiration, Reopening and Wage Adjustment Provisions of Major Agreements*, B. L. S. Report No. 102 (Dept. of Labor, Bur. of Labor Stat., April, 1956).

provision[s] for suspending strike bans in event of a deadlock in negotiations.”¹⁰ Plainly, the inseparability of effective negotiations and the power to strike is one of the tenets in “the philosophy of bargaining as worked out in the labor movement in the United States” which the Act “has been considered to absorb.” *National Labor Relations Board v. American National Insurance Co.*, 343 U. S. 395, 408, quoting *Telegraphers v. Railway Express Agency*, 321 U. S. 342, 346. The decision below, however, “would ‘deprive [employees] of their most effective weapon * * * when their need for it is obvious’” (*Mastro Plastics, supra*, 350 U. S. at 286), namely, to secure modification of the contract where the agreement permits such changes. It is unreasonable to attribute to Congress a purpose to impose an affirmative duty to bargain for contract modifications and at the same time to forbid the right to strike so essential to collective bargaining.

The Board’s construction of Section 8 (d), unlike that of the court below, fully assimilates the right to strike into the regulation there made of the bargaining relationship, as we think Congress intended. Thus, in the Board’s view, Section 8

¹⁰ *Basic Patterns in Union Contracts*, Bureau of National Affairs, Collective Bargaining Service, 15: 325-326; 36: 301-302. See also *Personnel Management, Labor Policy and Practice: Strikes and Lockouts*, Bureau of National Affairs, 255: 181; *Work Stoppage Provisions in Union Agreements*, 74 Monthly Labor Review, pp. 273-274 (Dept. of Labor, Bur. of Labor Stat., March 1952).

(d) curtails bargaining strikes only to the extent that there is no obligation to bargain, i. e., during contract periods when modifications are not in order. Correspondingly, where renegotiation is permissible and bargaining is made mandatory, either during the term of a contract or on its termination, the Board's construction makes available to employees the right to support their position by their traditional economic sanction, without which the bargaining process is substantially drained of meaning. The accommodation thereby achieved between contract stability and the right to strike accurately reflects, we submit, the principles of collective bargaining established by the Act generally, and, as we have shown, effectuates the purpose manifested in both the legislative history and the structure of the Act.

D. The interpretation of Section 8 (d) adopted by the Board's majority is preferable to either of the separate interpretations advanced in the concurring and dissenting opinions

It is to be noted that not a single member of the Board charged with implementing and harmonizing the provisions of the Act reached the conclusion of the court below, the result of which, we have sought to show, is stultification of the bargaining process Congress envisaged. However, there was disagreement within the Board, and the views of the one concurring and one dissenting member are outlined here in the interest of a full presentation. It will be observed that both of these separate opinions, the dissent as

well as the concurrence, are found on analysis to be less restrictive of the right to strike than the opinion of the Board majority, and *a fortiori* less restrictive than the decision of the court below. In outlining these alternative approaches, we note the reasons why the conclusion of the majority is to be preferred.

1. Board Member Peterson, in his concurring opinion, suggests that Section 8 (d) does no more than establish a 60-day cooling-off period during which strikes in support of contract changes are not permitted; that apart from this limitation there is no ban against such strikes during the existence of a contract, whether or not the contract provides for modifications during its term (R. 219-221). Because the 60-day period following notice had lapsed before the Union struck in this case, Member Peterson, like the majority, finds the strike outside the prohibition of Section 8(d). His reading, however, admittedly gives no effect to the alternative phrase in Section 8 (d) prohibiting strikes during the 60-day notice period "or until the expiration date of such contract, whichever occurs later," except in the situation where the notice is given less than 60 days before the termination of the contract. If notice is given for the purpose of ~~the~~ modifying or terminating a contract early in its term, for example, a strike in support of contract proposals would be allowed by Member Peterson as soon as the 60-day period had elapsed, even if the contract provided a

much later date for making the proposed changes. The result seems contrary to the intendment of Section 8 (d) in two respects: (1) there is no sufficient basis for limiting the applicability of the "whichever is later" phrase to the single situation where notice is given less than 60 days before the contract's end, and (2) by permitting strikes in support of contract changes during intervals when the contract itself provides for no such changes, the stability of the contractual relationship which Congress meant to protect by Section 8 (d) is impaired. See pp. 29-30, *supra*.

2. Board Member Murdock, dissenting, would restrict the application of Section 8 (d) only to the period around the termination of a contract (R. 225). Under this view, the notice requirements and proscription against strikes must be satisfied by parties wishing to make contract changes at the end of the contract period, but at no other time during the contract's existence. Applied here, this construction of Section 8 (d) brings the Union's strike within the prohibition of that provision, for it occurred at a time when the contract could be terminated upon 60-days' notice. Although it happens to work against the Union in the particular circumstances of this case, this construction is in general the least restrictive upon strikes of any which have been advanced, for under it the limitations of Section 8 (d) pertain only to a short period in the existence of a

contract. Nothing in Section 8 (d); however, so limits its application. Indeed, the express reference to occasions when parties wish to modify contracts seems to require, as we have shown, *supra*, pp. 23-26, that the restriction be held to apply to changes intended to be made during the course of, as well as at the end of, a contract. No reason is apparent why Congress should wish to require that negotiations should be in accordance with the statutory definition of collective bargaining at one time but not at the other. Moreover, as the Board majority pointed out (R. 211-212), the suggested narrowing of the strike prohibition in Section 8 (d) eliminates entirely the object of providing the same stability to bargaining relationships as that contemplated by the parties' contracts; strikes for contract changes under this reading would be permitted even without the 60-day notice, except at the end of the contract period. It seems unlikely, in view of the general purpose of Section 8 (d), that Congress meant to provide for a "cooling off" period only at the termination of the contract. As the Board also observed (R. 213), this interpretation would bring about the anomalous result that the Union "could have struck without any notice in August [1951], but, by virtue of giving the notice, and having exhausted all the mediating and negotiating requirements of Section 8 (d) [the Union] could not lawfully strike the following April."

We do not believe that either of the above-suggested alternative interpretations, or that of the court below, satisfactorily explains the language or effectuates the purpose of Section 8 (d). The Board's reading of this Section, on the other hand, gives a consistent and reasonable meaning to the phrase "expiration date" as used throughout the Section, and fully accommodates the dual Congressional purpose of preserving the right to strike where it is essential to the practice of collective bargaining and of stabilizing the bargaining relationship in accordance with the agreements which result from the bargaining process. Cf. *Mastro Plastics Corp.*, *supra*, 350 U. S. at 284.

II

RESPONDENT'S ALTERNATIVE CONTENTION, THAT THE STRIKE IN THIS CASE VIOLATED THE EXISTING CONTRACT, IS WITHOUT MERIT

The Company contended both before the court below and in its opposition to the petition for certiorari that, irrespective of the application in this case of Section 8 (d) of the Act, the employees were not entitled to the Act's protection against unfair labor practices because their strike was in breach of the existing collective bargaining agreement. The court below did not reach this question since it held that the strike was prohibited by Section 8 (d) of the Act. Anticipating the Company's alternative argument here, we think its error may be briefly demonstrated.

In essence, the Company's contention is that a strike for contract modifications necessarily constitutes a repudiation of an existing contract, regardless of the absence, as in this case, of a no-strike clause, and thus deprives the strikers of protection against the commission of unfair labor practices. This Court's decision in *National Labor Relations Board v. Sands Manufacturing Co.*, 306 U.S. 332, is mistakenly claimed to support this position. In the *Sands* case, the employees refused, at a time when their contract with the employer had more than six months to run, to continue work "in accordance with the provisions of the contract." 306 U. S. at 343. This Court upheld the propriety of the employer's action in discharging the employees "for repudiation * * * of [their] agreement." *Ibid.*

Sands does no more than establish that employees who refuse to work in accordance with the terms to which they have agreed for a specified time have broken their contract and may be discharged therefor. It does not support the Company's thesis that a strike for contract modifications is forbidden at a time when the parties, as in this case, have agreed that their contract should be opened for the purpose of negotiating modifications. As we have shown, *supra*, pp. 35-43, bargaining over contract proposals, whether during or at the end of the contract term, can be carried on in the manner contemplated by the Act only where there is the right to back bar-

gaining positions by the right to strike. The obligation of a contracting party not to strike which was recognized in *Sands* is thus only co-extensive with the period for which the parties have agreed that the contract is not subject to alteration. The contrary view advanced by the Company negates the entire purpose of a reopening provision, which is designed to introduce collective bargaining between the parties. Accordingly, the simple but decisive difference between *Sands* and this case is that here the employees were acting within the contemplation of their contract, not in repudiation of it.

Even if it were to be conceded, moreover, that the strike was in breach of the existing contract, the Company would still not be entitled to immunity for the unfair labor practices found to have been committed by it. The right to discharge employees who strike in breach of their contract, as recognized in *Sands*, is premised upon the employer's legitimate interest in operating his business in accordance with an "employment contract * * * binding on both parties" which has been achieved through collective bargaining. 306 U. S. at 342. But this is not to say that an employer who chooses not to exercise that right may thereafter penalize his employees for engaging in otherwise protected activity. In brief, the employer's legitimate purpose of protecting his business interests against improper conduct cannot justify employer opposition to

lawful activities unrelated to the wrong which gave rise to the measure of protection thus afforded him. Accordingly, the employer faced with a strike in breach of contract may discharge the strikers for their breach, but if he elects to retain them as employees, he must treat them in accordance with the Act's provisions protecting the organizational rights of all employees.

The foregoing principle, implicitly recognized in the *Sands* opinion,²⁰ has long and uniformly been followed by the courts of appeals in cases where employees have engaged in unprotected activities in spite of which, for one reason or another, their employers continued their employment. The employers have not been permitted in these cases to resurrect as a justifiable ground for a subsequent discrimination or refusal to bargain the fact that the employees had engaged in unprotected conduct, even though that conduct gave the employers an option originally to terminate their employment.²¹

²⁰ In treating the contentions in the *Sands* case that the strikers were discharged because of their union membership, and that some were offered reinstatement after the strike on discriminatory terms, the Court stated separate grounds for not finding unfair labor practices; it apparently assumed that the breach of contract was not a sufficient defense to these contentions. See 306 U. S. at 339-342, 345-346.

²¹ *National Labor Relations Board v. Reed & Prince Mfg. Co.*, 118 F. 2d 874, 885 (C. A. 1), certiorari denied, 313 U. S. 595; *National Labor Relations Board v. Highland*

In this case, the Company made no attempt to replace the strikers, and continued to negotiate with the Union, looking toward a new contract and settlement of the strike. Having thus chosen not to discipline its employees for their allegedly improper strike action, the Company was obliged to maintain the even handed treatment of its employees which the Act requires. Instead, as the Board found, the Company conditioned reinstatement of the striker's upon abandonment of "their adherence to the Union as their bargaining representative," and conditioned the execution of the agreement eventually reached with the Union upon the withdrawal of the unfair labor practice charge in this case. These requirements, which

Shoe, Inc., 119 F. 2d 218, 222 (C. A. 1); *National Labor Relations Board v. E. A. Laboratories, Inc.*, 188 F. 2d 885 (C. A. 2); certiorari denied, 342 U. S. 871; *National Labor Relations Board v. Spiewak*, 179 F. 2d 695, 699 (C. A. 3); *National Labor Relations Board v. Wallick*, 198 F. 2d 477, 484 (C. A. 3); *Hazel-Atlas Glass Co. v. National Labor Relations Board*, 127 F. 2d 109, 118-119 (C. A. 4); *National Labor Relations Board v. Alabama Marble Co.*, 185 F. 2d 1022 (C. A. 5), certiorari denied, 342 U. S. 823, enforcing 83 NLRB 1047; *National Labor Relations Board v. Mt. Clemens Pottery Co.*, 147 F. 2d 262, 267 (C. A. 6); *National Labor Relations Board v. Aladdin Industries*, 125 F. 2d 377, 382 (C. A. 7), certiorari denied, 316 U. S. 706. Cf. *National Labor Relations Board v. Kaiser Aluminum & Chemical Corp.*, 217 F. 2d 366, 367-369 (C. A. 9); *United Electrical Workers v. National Labor Relations Board*, 223 F. 2d 338, 342-343 (C. A. D. C.). See, also, Note, 63 Yale L. J. 1186, 1191, 1195; Note, 46 Mich. L. Rev. 995, 999; Note, 22, George Wash. L. Rev. 248, 250.

constitute unfair labor practices,²² were neither related to nor based on the alleged breach of contract, and thus cannot be excused even assuming there was such a breach.

Accordingly, whether or not the strike was in breach of the contract is an irrelevant issue in this case; the unfair labor practices found by the Board cannot be explained away irrespective of how that issue might be determined.²³

²² The correctness of the Board's finding that, apart from the lawfulness of the strike, the impositions of these conditions violated Sections 8 (a) (1), (3), and (5) of the Act is well established. See, e. g., *Medo Photo Supply Co. v. National Labor Relations Board*, 321 U. S. 678, 683-685; *J. I. Case v. National Labor Relations Board*, 321 U. S. 332, 337-339; *National Labor Relations Board v. Swift & Co.*, 129 F. 2d 222, 223 (C. A. 8); *National Labor Relations Board v. American Mfg. Co.*, 106 F. 2d 61, 68 (C. A. 2), aff'd as modified, 309 U. S. 629.

²³ It may be questioned whether, assuming that the strike violated Section 8 (d), the loss of employee status provision in that Section would permit an employer to condition the reemployment of the strikers upon the discriminatory terms prescribed by the Company here. The court below tacitly assumed that failure to observe the requirements of Section 8 (d) relegates the strikers to an outlaw status and that the employer may condition their reemployment upon renunciation of rights which they otherwise have under the Act. The Board did not have occasion to determine whether Section 8 (d) works so severe a penalty. But see *United Electrical Workers v. National Labor Relations Board*, 223 F. 2d 338, 342-343 (C. A. D. C.), certiorari denied, 350 U. S. 981.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed.

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August 1956.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Sec. 151, *et seq.*) are as follows:

* * * * *

SEC. 8. (a) It shall be an unfair labor practice for an employer * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

“(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modification;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or

ceased to be the representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

* * * * *

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. [REDACTED] 4

NATIONAL LABOR RELATIONS BOARD *Petitioner*

v.

LION OIL COMPANY *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENT, LION OIL COMPANY,
IN OPPOSITION TO PETITION

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 241

NATIONAL LABOR RELATIONS BOARD *Petitioner*

v.

LION OIL COMPANY *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENT, LION OIL COMPANY,
IN OPPOSITION TO PETITION

QUESTION PRESENTED

The question presented is—Do employees who go out on economic strike, when a contract between their employer and their union governing their working conditions is in full force and effect, to force an immediate termination of the contract, engage in activity which is unprotected under the Labor Management Relations Act of 1947?

ARGUMENT

We accept the statement of the case made by distinguished counsel for the Petitioner.

We respectfully submit that, on that statement, the petition for writ of certiorari should be denied.

The statement contained in the first paragraph of that portion of the petition which appears under the heading "Question Presented" demonstrates that the position taken in this case by the majority of the members of National Labor Relations Board, and by distinguished counsel in their argument to sustain the Board's position, is conceived in error.

Counsel for the Petitioner state in that paragraph:

"Section 8 (d) (4) of the Act provides that *parties* who wish to modify or terminate a collective bargaining contract must 'continue . . . in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice [of *their* wish to modify or terminate] is given or until the expiration date of such contract, whichever occurs later.'" (emphasis supplied).

That statement is not a correct statement as to the provision of the statute to which reference is made therein.

Directing our attention particularly to sub-section (4) of Section 8 (d) of the Act, which must be read in connection with the words contained in the first seven lines of the proviso of Section 8 (d), we see that the provisions of the Act to which counsel for the Petitioner refer in the paragraph quoted are as follows:

“ . . . where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that *no party* to such contract shall terminate or modify such contract, unless *the party desiring such termination or modification*—
 . . .

(4) continues in full force and effect, without resorting to strike or lock-out, all of the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever is later
 * * * (emphasis supplied).

Counsel for the Petitioner have misconstrued those provisions of the Act. They have nothing to do with a situation in which the *parties* to a labor relations contract wish to modify or terminate it. They have only to do with a situation in which *one of the parties* to such a contract desires to modify it or terminate it by his unilateral act.

Those provisions of the statute proscribe a labor union calling a strike, and proscribe the men represented by it from participating in a strike, when that strike is in violation and repudiation of an existing labor contract.

Those provisions go even further to proscribe a strike in the absence of sixty-day notice of termination of the contract even though, by the words of the contract, it could be terminated within a shorter period.

We note that counsel for the Petitioner, in quoting, in Note 3 to their petition, a statement of Senator Taft, cut short the sentence quoted. The full sentence to which reference is made, as quoted in Note 3 to the opinion in *U. A. W. v. O'Brien*, 339 US 454, is as follows:

“That means that we recognize freedom to strike when the question involved is the improvement of

wages, hours, and working conditions, *when a contract has expired and neither side is bound by a contract*" (emphasis supplied).

The quotation in *Amalgamated Association v. W. E. R. B.*, 340 US 383, n. 21, is to the same effect.

The provisions of Section 8 (d) of the Act, which we have quoted, wove into the fabric of the National Labor Relations Act the decision of this Honorable Court rendered several years before in *NLRB v. Sands Manufacturing Company*, 306 US 332. In the opinion in that case this Court set forth the principle, for all to see and for all to heed, that employees, who strike in repudiation of the provisions of an existing contract between their employer and their Union representative, thereby lost the protection otherwise afforded them by the provisions of the National Labor Relations Act.

Our study of the decisions of this Court has not disclosed to us any subsequent opinion in which the point so established in *Sands* has been involved.

However, in each of three cases before this Court since the decision in *Sands*, in the course of its opinion, this Court has indicated most clearly that, by its decision in the *Sands* case, the principle has become established that employees who strike in repudiation of an existing contract between their Union and their employer governing their working conditions lose the protection of the Act.

International Union v. W. E. R. B., 336 US 245, 259.
NLRB v. Rockaway News Supply Co., 345 US 71, 80.
NLRB v. Local Union No. 1229, 346 US 464, 477, n. 13.

We, therefore, respectfully submit that the decision of the Court of Appeals for the Eighth Circuit in this case

did not "decide an important question of federal law which has not been, but should be, settled by this court", but to the contrary, reached a conclusion in complete conformity with the decision of this Court in the Sands Manufacturing Company case.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for writ of certiorari should be denied.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

NO. 4

NATIONAL LABOR RELATIONS BOARD.....*Petitioner*

v.

LION OIL COMPANY AND MONSANTO CHEMICAL COMPANY

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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INDEX

	Page No.
Statute Involved	1
Question Presented	2
Statement of the Case	3
The Facts	3
Proceedings Before the Board	6
Proceedings in Court of Appeals	8
Summary of Argument	8
Argument	18
The calling by the Union of the strike here involved and the participation in that strike by the employees here involved was activity unprotected by section 7 of the Labor Management Relations Act of 1947; consequently, the Board had no right to enter the order which it entered in this cause	18
The Union, in calling the strike involved in this case and causing the employees represented by it to refuse to work for the company, terminated the collective bargaining agreement between the union and Lion Oil Company within the meaning of the word "terminate" as used in Section 8 (d) of the Act without complying with the requirements of that section with respect to such termination, as a consequence of which the Board had no authority to issue the order which it issued in this cause	28
Conclusion	36
Appendix	37

CITATIONS

Cases:

<i>Brown v. Allen</i> , 344 US 443	13, 27
<i>Helvering v. Gowran</i> , 302 US 238	13, 27
<i>International Union v. W. E. R. B.</i> , 336 US 245	22
<i>Lion Oil Company v. Marsh</i> , 220 Ark. 678, 249 SW 2d 569	9, 18
<i>Mastro Plastics Corp. v. NLRB</i> , 350 US 270	8, 18

CASES—Continued

Page No.

<i>NLRB v. Rockaway News Supply Co.</i> , 345 US 71	9, 19
<i>NLRB v. Sands Manufacturing Co.</i> , 306 US 332	10, 20

Statutes:

Labor Management Relations Act of 1947 (61 Stat. 136, USCA, Title 29, Sect. 151, et seq.)	1
Section 7	1
Section 8 (d)	1, 13, 28
Section 10 (c)	1, 13, 26

Miscellaneous:

H. Rep. 245, 80th Cong., 1st Sess., p. 19	10, 20
S. Rep. 105, 80th Cong., 1st Sess., p. 15	10, 20
S. Rep. 105, 80th Cong., 1st Sess., p. 28	21
S. Rep. 105, 80th Cong., 1st Sess., p. 24	34
S. Min. Rep. 105, 80th Cong., 1st Sess., p. 12	11, 21
H. Conf. Rep. 510, 80th Cong., 1st Sess., p. 38	11, 21
Cong. Rec. June 5, 1947, p. 6598, 6600	11, 21
Cong. Rec. April 23, 1947, p. 3955	33

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STATUTE INVOLVED

The Labor Management Relations Act of 1947 (61 Stat. 136, U. S. C. A., Title 29, Sect. 151, et seq.) Section 7 (Appendix 37), Section 8 (d) (Appendix 38), and Section 10 (c) (Appendix 40).

QUESTION PRESENTED

Do employees who go out on economic strike, when a collective bargaining contract between their employer and their union governing their working conditions is in full force and effect, in violation of that contract, engage in activity which is unprotected by the Labor Management Relations Act of 1947?

STATEMENT OF THE CASE

The Facts

Lion Oil Company and Oil Workers International Union, CIO, the certified bargaining agent of employees of the company working in the operating and labor departments of its chemical plant at El Dorado, Arkansas, entered into a collective bargaining contract providing in detail the wages, hours and conditions under which those employees should work for the company during the term of the agreement. Article I of the agreement (R. 28, 206) is as follows:

"ARTICLE I

Term of Agreement

This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

✓ This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

• (a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the sub-section immediately pre-

ceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

On August 24, 1951, the union transmitted to the company, Federal Mediation and Conciliation Service and the Labor Commissioner of Arkansas, by mail, the following letter (R. 81):

"OIL WORKERS INTERNATIONAL UNION,
C. I. O.

EL DORADO LOCAL NO. 434
EL DORADO, ARKANSAS

AUGUST 24, 1951

REGISTERED MAIL

RETURN RECEIPT REQUESTED

SPECIAL DELIVERY

Lion Oil Company
Lion Oil Building
El Dorado, Arkansas

Attention: Mr. T. M. Martin, President
Federal Mediation and Conciliation Service
14th and Constitution Avenue, N. W.
Washington 25, D. C.

Gentlemen:

Pursuant to the provisions of the Labor-Management Relations Act of 1947, you are hereby notified that we desire to modify the collective bargaining contract now in effect between your company and this Union, in accordance with the provisions of the agreement.

We are attaching hereto some of the proposed changes which we desire to include in a new contract or as modifications to the present agreement. We shall be glad to and now offer to meet and confer with you for the purpose of negotiating a new contract or modifications to the present agreement.

Copies of this notice are being served upon the Federal Mediation and Conciliation Service; and the appropriate State Agency for the purpose of advising them of this dispute solely because of the alleged requirements of Section 8 (d) (3) of the Labor-Management Relations Act of 1947, and subject to the validity of all provisions of such Act.

Sincerely yours,

OIL WORKERS INTERNATIONAL
UNION, C. I. O.

By (s) E. P. Shelton, Chairman
Workmen's Committee

Lion Oil Group Local 434-OWIU-CIO

Att."

Attached to the letter were proposals for 43 amendments to the then existing contract (R. 82-94).

Representatives of the company and the union first met on August 29, 1951, to discuss the proposed amendments. Between that date and April 30, 1952, 37 such meetings were held for that purpose. No agreement for amendment of the existing contract was reached.

On April 30, 1952, the union, and other unions, called a nationwide strike in the oil industry to force an increase of 22c in the hourly wage rate of each employee involved, an increase in shift differentials to 6c an hour for work on the evening shift and to 12c an hour on the graveyard shift, and an additional holiday with pay. On that call, the strike here involved began on that date (R. 117).

Neither the company nor the union gave to the other notice of termination of the contract (R. 150).

While the strike was in progress the company continued the operation of portions of the plant by supervisors, clerks and technicians (R. 151, 139-140). On June 21, 1952, after the employees here involved had been continuously on strike since April 30, 1952, the union offered to return all strikers to work unconditionally (R. 153). That offer was refused by the company. Two days later the company sent to each striking employee a copy of a letter which it had sent to the union, in which letter the company stated that the dispute could not be settled until the employees were willing to agree to go to work and continue to work for a period of at least one year with no strike or other work stoppage during that period (R. 95, 100).

On or shortly after June 21, 1952, striking employees, in groups and individually, requested permission from the plant manager to return to work. He refused the request of some because they would not agree to continue to come to work if it were necessary to cross a picket line. Some were refused permission by him since he then had no work for them to do. A few, each of whom agreed to continue to work even though it was necessary to cross a picket line, were permitted by him to return to work (R. 156, 120-121).

Negotiations for a settlement continued after June 21, 1952, and on August 3, 1952, a new contract was entered into between the company and the union and all strikers returned to work immediately thereafter (R. 115-116, 206).

Proceedings Before the Board

After June 21, 1952, and prior to the settlement of the dispute, the union filed with National Labor Relations Board a charge that the company was guilty of unfair labor practices in its dealing with the union, after the union

7

had, on June 21, 1952, offered to return the strikers to work and prior to the settlement of the dispute.

On the basis of that charge the Board issued a complaint against the company, charging it with violation of Sections 8 (a) (1), 8 (a) (3) and 8 (a) (5) of the Labor Management Relations Act, in its relations with the union during the period mentioned in the charge (R. 1).

The company filed an answer to the complaint in which it denied the allegations of unfair labor practices and, further, set up as a separate defense the claim that the strike was called by the union at the time when there was in effect between the union and the company a collective bargaining contract; that the strike was in violation of that agreement, was an unfair labor practice under the provisions of the Act, and that the employees participating therein were not entitled to any relief under the Act (R. 23).

In its Proposed Findings of Fact, Proposed Conclusions of Law and Proposed Order, the Board concluded that the union had complied with Section 8 (d) of the Act when the strike here involved began (R. 162), to which the company filed exception (R. 195, Exception 15); concluded that the company was not justified in refusing to reinstate the strikers until a new contract was signed (R. 163), to which the company filed exception (R. 196, Exception 16); and concluded that there was no misconduct of the union or delinquency by the employees in their obligation to the company (R. 164), to which the company excepted (R. 196, Exception 18).

The majority of the Board held that the company was guilty of unfair labor practices within the meaning of Sections 8 (a) (1), 8 (a) (3) and 8 (a) (5) of the Labor Management Relations Act and, among other orders, ordered the company to make whole each of the 546 (R. 6) employees with respect to loss of earnings suffered between June 21, 1952, and August 3, 1952 (R. 217, 133).

Proceedings in Court of Appeals

On petition of the company for an order setting aside the order of the Board, and the cross-petition of the Board for enforcement of the order, the United States Court of Appeals for the Eighth Circuit set aside the order of the Board on the ground that the strike here involved was in violation of contract between the company and the union, was therefore a violation of Section 8 (d) of the Act, that the strikers lost their status as employees and were not entitled to relief provided in the Board's order (R. 255).

While Petition for Writ of Certiorari was pending herein, Lion Oil Company was merged into Monsanto Chemical Company and an order was entered making the company last named a Respondent.

To review the decision of the Court of Appeals, certiorari was granted (R. 256).

Summary of Argument

As stated in *Mastro Plastics Corp. v. NLRB*, 350 U. S. 270: "The answer turns upon the proper interpretation of the particular contract before us. Like other contracts it must be read as a whole and in the light of the law relating to it when made."

When we view in that light the decision of the Court of Appeals which is under review, the conclusion reached by that Court is found to be sound and should be affirmed. Although that Court mentioned only Section 8(d) of the Act as a basis for its conclusion and order, its findings that the strike was in violation of contract, that the strikers lost their status as employees of the company and were not entitled to the relief that the order of the Board afforded, equally sustained that conclusion and order on the principle that the activities of the union and of the employees in the

strike here involved were not protected activities within Section 7 of the Act.

We shall discuss the principle last mentioned before proceeding to the question of applicability of Section 8 (d) to the facts in this case.

The strike here involved was in violation of the contract in effect between the union and the company at the time the strike began. Each member of the Board in his opinion in this case recognized that the contract here involved was in effect when the strike began. Distinguished counsel for the petitioner admit that fact in their brief at page 17. The Court of Appeals so found (R. 255). The Supreme Court of Arkansas so decided in a case involving this same strike and this same contract. *Lion Oil Company v. Marsh*, 220 Ark. 678, 249 S. W. 2d 569, 571. The strike was a breach of, and a repudiation of, that contract.

The contract fixed a specific hourly rate at which each employee doing work in one of the jobs listed was to be paid for that work while the contract was in effect (R. 67), provided for the payment of a shift differential of 4c an hour for work done on the evening shift and 6c an hour for work done on the graveyard shift (R. 68), and provided for six holidays with pay each year (R. 36). Thereby the union agreed that each employee would work under the contract, including those provisions for compensation, so long as he continued to be an employee of the company and the contract continued to be in effect. Likewise, each of the men represented by the union in making that contract was bound by that agreement made by his bargaining agent. *NLRB v. Rockaway News Supply Co.*, 345 U. S. 71.

When the union, on April 30, 1952, called these employees out on strike, as a part of a nationwide strike in the oil industry, for the purpose of forcing the company to

increase the basic hourly wage rate of each employee by 22c an hour, to increase the shift differentials to 6c an hour for evening shift work and to 12c an hour for graveyard shift work, and to allow an additional holiday with pay, (R. 117) it breached and repudiated that contract.

In *NLRB v. Sands Manufacturing Co.*, 306 U. S. 332 (1939), this Court held that employees who went on strike to force the company to abandon the application of the provisions of the contract between their union and the company providing for sectional seniority and establish in lieu thereof plant seniority, breached and repudiated the contract; that the company was at liberty to treat them as having severed their relations with the company because of their breach and to consummate their separation from the company's employ and hire others to take their places, and that the Board had no right or authority, under the National Labor Relations Act, to order their reinstatement.

When the Congress had before it for consideration the Taft-Hartley amendment to the National Labor Relations Act, the principle established by that decision was recognized by both the proponents and the opponents of the amendment.

Sect. 7 (a) H. R. 3020 (H. Rep. 245, 80 Cong., 1st Sess. p. 19), as reported by the Committee on Education and Labor (Appendix 42), provided that employees should have the right to participate in concerted activities but expressly proscribed such activities which constituted "violations of collective-bargaining agreements."

In the report of the Committee on Labor and Public Welfare submitting S. 1126 (S. Rep. No. 105, 80th Cong., 1st Sess., p. 15), the majority of the committee stated: "The committee bill makes collective bargaining contracts equally binding and enforceable on both parties." and later it was stated: "If unions can break agreements with relative

impunity, then such agreements do not tend to stabilize industrial relations." (Appendix 43, 44).

Again, in that report, in reference to Section 13 of the Act (p. 28), attention was called to the fact that this Court had interpreted the National Labor Relations Act as not conferring protection upon employees who strike in breach of contract, or in breach of some Federal law, or who engage in illegal acts while on strike, and it was stated: "This bill is not intended to change in any respect existing law as construed in these administrative and judicial decisions" (Appendix 45).

In the minority report on S. 1126 (S. Min. Rep. 105, 80th Cong., 1st Sess., p. 12) under the heading "Violations of Collective-Bargaining Agreements," the minority stated: "There can be no question that collective-bargaining agreements, like other contracts, should be faithfully performed by the parties."

In the House conference report on H. R. 3020 (H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 38) under the title "Rights of Employees," the committee urged the House to recede from its insistence upon including an expressed provision in Section 7 of the Act excluding concerted activities of employees in violating a collective bargaining agreement from concerted activities protected by the Act since it was established that violation of a collective bargaining agreement was concerted activity not protected by the Act, and, consequently, the inclusion of that specific provision was unnecessary (Appendix 46).

Senator Taft, in explaining the conference bill in the Senate and advocating its adoption, incorporated as a part of his remarks a summary of the principal differences between the conference bill and the bill which the Senate had passed (Cong. Rec. June 5, 1947, p. 6598, 6600), which

statement in reference to Section 7 of the conference bill is to the same effect (Appendix 48).

When the employees here involved went on strike on April 30, 1952, each of them lost his status as an employee of the company. The company was, as held in *Sands*, no longer obligated to negotiate with the union as their representative, and could have discharged each of them had it seen fit to do so.

When on June 21, 1952, the union offered to cause the employees to return to work, the company refused to permit them to return until such time as the union had entered into a contract with it to extend for a period of one year, with the agreement that there should be no strike or other concerted work stoppage during that period. That action by the company was suspension from employment of each of those employees.

Learned counsel for the petitioner argue that, if the strike was in breach of contract, the only right which the company had was to discharge each of the employees if it be held that their participating in the strike was an unprotected activity. To adopt that attitude would remove human relations from labor management relations; would convert many disputes resulting from employees striking in violation of contract into bitter conflicts, disrupting industrial peace. To avoid the drastic course of discharging each of this great number of men, the company elected to suspend each of them from employment until its demands on the points mentioned were met. Each of the employees was suspended because of his violation of the terms of the contract between the company and his union in effect at the time the strike here involved began. That suspension was a suspension of his employment for cause. The Board, therefore, had no authority to enter an order requiring the company to make each employee whole for the loss of earnings which he may have suffered between June 21,

1952, and the date upon which he returned to work under the new contract. Section 10 (c) of the Act (Appendix 40) contains the provision: "No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause."

For these reasons the order of the Court of Appeals in this case setting aside the order of the Board was proper and should be affirmed regardless of whether the order may be sustained by the application of Section 8 (d) of the Act to the facts in this case. "In the review of judicial proceedings, the rule is settled that, if the decision below is correct, it must be affirmed although the lower court relied upon a wrong ground or gave a wrong reason." *Brown v. Allen*, 344 U. S. 443, 459, *Helvering v. Gowran*, 302 U. S. 238, 245.

The Court of Appeals was correct in holding that the strike here involved was in violation of Section 8 (d) of the Act and in setting aside the order of the Board on that ground. Section 8 (d) provides specific requirements which must be met by a party to a collective bargaining agreement who, by unilateral action, terminates that agreement. A party to such an agreement who terminates it by unilateral action without complying with all of those conditions is, by the provisions of that Section, made guilty of the commission of an unfair labor practice. At the time this strike began, the contract between the union and Lion Oil Company, in accordance with the provisions of sub-paragraph (b) of Article I (R. 28) of the contract, could have been terminated by either party on sixty day notice given to the other. The union, however, did not elect to terminate the agreement, as, under the contract, it had a right to do, by notice to the company, but took the bit in its teeth and called the employees here involved out on strike, thereby.

strike on that day, for the purpose of forcing Lion Oil Company to put into effect immediately the increase in pay for each employee which the union demanded (R. 117).

The act of the union in calling the strike, and the act of each employee who participated in the strike, was a breach and repudiation of that contract. In *NLRB v. Sands Manufacturing Co.*, 306 U. S. 332 (1939), this Court held that employees, who went out on strike to force their employer to abandon the application of the provisions of the contract between their union and the company providing for sectional seniority and establish in lieu thereof plant seniority, breached and repudiated the existing contract.

On the authority of that decision, the calling of the strike in this case by the union and the participation in it by the employees involved was a breach and repudiation of the contract between the union and Lion Oil Company.

When the Taft-Hartley amendment to the National Labor Relations Act was under consideration by the Congress, the decision of this Court in the *Sands Manufacturing Company* case had a most decisive effect upon the deliberations in Congress and the form in which the amendment was adopted.

Sect. 7 (a) H. R. 3020 (H. Rep. 245, 80 Cong., 1st Sess., p. 19), as reported by the Committee on Education and Labor (Appendix 42), provided that employees should have the right to participate in concerted activities but expressly proscribed such activities which constituted "violations of collective-bargaining agreements."

In the report of the Committee on Labor and Public Welfare of the Senate submitting S. 1126 (S. Rep. No. 105, 80th Cong., 1st Sess., p. 15), the majority of the committee stated: "The committee bill makes collective-bargaining contracts equally binding and enforceable on both parties." and later it was stated: "If unions can break agree-

ments with relative impunity, then such agreements do not tend to stabilize industrial relations" (Appendix 43, 44).

Again, in that report, in reference to Section 13 of the Act (p. 28), attention was called to the fact that this Court had, in the *Sands Manufacturing Co.* case, interpreted the National Labor Relations Act as not conferring protection upon employees who strike in breach of contract or in breach of some Federal law or who engage in illegal acts while on strike. The statement with reference thereto concluded with the paragraph: "This bill is not intended to change in any respect existing law as construed in these administrative and judicial decisions" (Appendix 45).

In the minority report on S. 1126 (S. Min. Rep. 105, 80th Cong., 1st Sess., p. 12) under the heading "Violations of Collective-Bargaining Agreements," the minority stated: "There can be no question that collective-bargaining agreements, like other contracts, should be faithfully performed by the parties."

In the House conference report on H. R. 3020 (H. Conf. Rep. No. 510, 80th Cong., 1st Sess., p. 38) under the title "Rights of Employees," the committee urged the House to recede from its insistence upon including an expressed provision in Section 7 of the Act excluding concerted activities of employees in violation of collective bargaining agreements from concerted activities protected by the Act, it being established that that provision was unnecessary (Appendix 46).

Senator Taft, in explaining the conference bill in the Senate, incorporated as a part of his remarks a summary of the principal differences between the conference bill and the bill which the Senate had passed (Cong. Rec., June 5, 1947, p. 6598, 6600), which statement in reference to Section 7 of the conference bill is to the same effect as the

statement in the House conference report to which we have just referred (Appendix 48).

This Court, in *International Union v. W. E. R. B.*, 336 U. S. 245, 259, in holding that Section 7 of the Act does not protect intermittent and unannounced work stoppages by employees, pointed to that portion of the House conference report last mentioned as persuasive in causing this Court to reach that conclusion. The statement of the majority of the Court in that opinion on that point, which to us is most significant, is as follows:

"As to the right to strike, however, this Court, quoting the language of § 13, has said, 306 U. S. 240, 256, 'But this recognition of the "right to strike" plainly contemplates a lawful strike — the exercise of the unquestioned right to quit work,' and it did not operate to legalize the sit-down strike, which state law made illegal and state authorities punished: *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U. S. 240. Nor, for example, did it make legal a strike that ran afoul of federal law, *Southern S. S. Co. v. National Labor Relations Board*, 316 U. S. 31; nor one in violation of a contract made pursuant thereto, *National Labor Relations Board v. Sands Mfg. Co.*, 306 U. S. 332; nor one creating a national emergency, *United States v. United Mine Workers*, 330 U. S. 258.

That Congress has concurred in the view that neither § 7 nor § 13 confers absolute right to engage in every kind of strike or other concerted activity does not rest upon mere inference; indeed the record indicates that, had the Courts not made these interpretations, the Congress would have gone as far or farther in the direction of limiting the right to engage in concerted activities including the right to strike. The House Committee of Conference handling the bill

which became the Labor Management Relations Act, on June 3, 1947, advised the House to recede from its disagreement with the Senate and to accept the present text upon grounds there stated under the rubric 'Rights of Employees.' H. R. Rep. No. 510, 80th Cong., 1st Sess., p. 38. The Committee pointed out that 'the courts have firmly established the rule that under the existing provisions of section 7 of the National Labor Relations Act, employees are not given any right to engage in unlawful or other improper conduct. In its most recent decisions the Board has been consistently applying the principles established by the courts.

* * * And 'it was believed that the specific provisions in the House bill excepting unfair labor practices, unlawful concerted activities, and violation of collective bargaining agreements from the protection of section 7 were unnecessary. Moreover, there was real concern that the inclusion of such a provision might have a limiting effect and make improper conduct not specifically mentioned subject to the protection of the Act.' "

The legislative history which we have cited establishes conclusively that the Union in calling the strike in this case and the employees involved in participating in that strike engaged in concerted activities unprotected by Section 7 of the Act.

Counsel for petitioner contend that the decision in the *Sands Manufacturing Co. case* " * * * does not support the Company's thesis that a strike for contract modifications is forbidden at a time when the parties, as in this case, have agreed that their contract should be open for the purpose of negotiating modifications" (48).

That statement, in our judgment, is unsound since it is predicated upon the unsupported assumption that the parties to the contract in this case had agreed that their

breaching, repudiating and terminating that contract with utter disregard of all of the requirements of Section 8 (d) of the Act.

The majority of the Board held that the union complied with Section 8 (d) of the Act by giving the company notice of its desire to amend the contract, informing Federal Mediation and Conciliation Service and the Commissioner of Labor of Arkansas of that fact, and waiting sixty days after that notice was given before it called the strike, though the contract remained in full force and effect at the time the strike was called. The gravamen of the reasoning of the majority of the Board in reaching that conclusion is the following statement (R. 213): "It suffices for our decision here that the contract specifically provided for modification and that the earliest date on which modification could be made effective was October 23, 1951."

If, by that statement, it was meant that October 23, 1951, was the first date upon which the contract could have been modified by mutual agreement, it is false. It is a most rudimentary principle of the law of contracts that a bilateral contract may be modified at any time by mutual consent of the parties. If, by that statement, the majority of the Board meant that October 23, 1951, was the earliest date on which modification of the contract, by unilateral action of one of the parties could be made, the statement is equally false. The contract here involved did not give either party the right to modify the contract by its unilateral act.

The language of Article I of the contract cannot be interpreted as giving to either party to the contract unilateral right to modify it, nor did it contain a re-opener clause, whatever that may mean. Article I of the contract provided only the procedure by which either party might have *cancelled and terminated* the contract on the happening, in the order stated, of each of four conditions prece-

dent: (1) written notice after August 23, 1951, by either party to the other of its desire to amend the agreement, (2) negotiations between the company and the union during the period of sixty days immediately following the receipt of such notice in an attempt to agree on the amendment proposed, (3) absence of agreement as to the proposed amendment during the period stated, and (4) a sixty day written notice of termination of the agreement.

That provision was hand tailored to fit the requirement of Section 8 (d) of the Act with respect to the notice required to terminate a contract permitting unilateral termination by notice. It has nothing to do with modification of the contract by one of the parties to it.

The notice given by the union of its desire to modify the contract did not modify the contract. It was not so intended for the union had no right under the contract to modify it. The notice was given "in accordance with the provisions of the agreement" (R. 81) as the first step toward a possible termination of the agreement in the manner provided in Article I thereof. The requirements of subsections (1), (2), (3) and (4) of the proviso of Section 8 (d), do not come into play with respect to modification of a contract in the absence of an act by one party to the agreement, who has a right under the contract to do so, to effect modification of it. The introductory clauses of the proviso so provide. Therefore Section 8 (d) requirements, relative to modification of a contract, have no bearing in this case, neither party having the right under the contract here involved to modify the contract. Learned counsel for the petitioner ignore the clear words of the introductory clauses of the proviso of that Section.

In fact, this strike was not related to the notice given by the union to Lion Oil Company on August 24, 1951. That notice stated a desire to amend the existing contract in 43 particulars (R. 82-94). This strike was called by the un-

ion eight months later as a part of a nationwide strike in the oil industry called by the union, and other unions collaborating with it (R. 117), to support their nationwide demand for specified increases in pay.

We submit that the legislative history, with respect to the various provisions of the Act, to which we have referred, demonstrates that, when a union causes employees whom it represents to refuse to work in accordance with the terms of an existing contract between the union and their employer, thereby breaching and repudiating that contract, the union has terminated the contract by unilateral action within the meaning of the word "terminate" as used in the introductory clauses of the proviso of Section 8 (d) and, by so doing, commits an unfair labor practice.

If the union had, after October 23, 1951, adopted the course of terminating the contract as provided in the contract before calling a strike, it could have done so by giving a sixty day written notice of its election to do so, which would have, in accordance with the provisions of the contract, ended the contract at the expiration of the sixty days. That notice also would have complied with the mandate of Section 8 (d) of the Act with respect to notice of termination. If such notice had been given and the union had thereafter called this strike prior to the expiration of the sixty days, it clearly would have committed an unfair labor practice under the provisions of Section 8 (d) and the striking employees which it represented would have lost their status as employees under the loss of status provision of that Section.

The union and the employees participating in this strike should not be placed in a more favorable position merely because of the fact that the union disregarded totally the requirements of Section 8 (d) and, by its unilateral act, brought to an end the life of the contract by total breach and repudiation of it. That anomalous result

is avoided by construing the word "terminate" in the introductory clauses of the proviso to denote the bringing of a bilateral collective bargaining agreement to an end through a total breach and repudiation of it by one party to it.

Unless the strike here involved was a termination of the contract by unilateral action of the union, the proscription of the proviso of Section 8 (d) with respect to termination has no application in this case.

We believe, however, that application of Section 8 (d) to the facts of this case by the Court of Appeals in its opinion in this case is sound and its order setting aside the order of the Board should be affirmed on that ground. If not, the order of the Court below should nevertheless be affirmed on the ground that this strike in violation of contract was unprotected activity.

ARGUMENT

Point I

THE CALLING BY THE UNION OF THE STRIKE HERE INVOLVED AND THE PARTICIPATION IN THAT STRIKE BY THE EMPLOYEES HERE INVOLVED WAS ACTIVITY UNPROTECTED BY SECTION 7 OF THE LABOR MANAGEMENT RELATIONS ACT OF 1947; CONSEQUENTLY, THE BOARD HAD NO RIGHT TO ENTER THE ORDER WHICH IT ENTERED IN THIS CAUSE.

In considering this point, we must determine the proper interpretation of the particular contract here involved. Like other contracts it must be read as a whole in the light of the law relating to it when made. So the majority of this Court stated in the recent opinion in the case of *Mastro Plastics Corp. v. NLRB*, 350 U. S. 270.

The fact that the contract between Lion Oil Company and the union was in full force and effect at the time the union called, and the employees represented by it began, the strike here involved is not in dispute. Each member of the Board in his opinion in this case recognized that fact. Distinguished counsel for the petitioner admit that fact in their brief at page 17. The Court of Appeals so found (R. 255). The Supreme Court of Arkansas so decided in a case involving this same strike and this same contract, *Lion Oil Company v. Marsh*, 220 Ark. 678, 249 S. W. 2d 569, 571.

Although the point is disputed by counsel for petitioner, it is, we submit, equally clear that the strike here involved was in violation of the contract in effect between the union and Lion Oil Company at the time the strike began.

The contract fixed a specific hourly wage rate for work done on each job to be performed, which the company was obligated to pay the employee and which the employee was obligated to accept for that work (R. 67). It provided that each employee working on the evening shift should be paid 4c an hour in addition to the basic hourly rate for each hour worked on that shift and that each employee working on the graveyard shift should be paid 6c an hour in addition to the basic hourly rate for each hour worked on that shift (R. 68). The contract provided for six holidays with pay during each year and for the payment of double the hourly wage rate for work done on one of those holidays (R. 36). Thereby the union agreed that each of the employees whom it represented in making the contract should, so long as he continued to be an employee of the company and the contract continued to be in effect, work for that compensation together with the additional allowances provided in the agreement. Furthermore, each of the men represented by the union in making that contract was obligated to work for the company for the compensation provided by the contract for work on the job in which he was employed. *NLRB v. Rockaway News Supply Co.*, 345 U. S. 71.

On April 30, 1952, while the contract, containing those provisions with respect to compensation and provisions as to many other conditions under which employees should work, was in full force and effect, the union, together with other unions, called a nationwide strike in the oil industry for the purpose of forcing each employer against which strike action was taken, including Lion Oil Company, to increase the basic hourly wage rate of each employee, employed by it and represented by the union, by 22c an hour, to increase his shift differentials to 6c an hour for evening shift work and to 12c an hour for graveyard shift work and to allow an additional holiday with pay. The employees here involved, in response to that call, began this

contract should be open for the purpose of negotiating modifications.

The provisions of Article I of the contract (R. 28) are not susceptible of such interpretation. The Article did not contain any provision that properly can be said to be a re-opening provision or a provision which opened the contract for the purpose of negotiating modifications. The brief of distinguished counsel for petitioner is replete with such unsupported statements. At page 17 is the statement that the contract provided for " . . . re-opening during its term for the purpose of modifying its provisions . . . " At page 20, October 23, 1951, is referred to as the date " . . . provided by the contract for modifications to become effective . . . " On the same page it is stated that the contract provided " . . . for re-opening and amendment during its term."

In the statement of the question presented (page 2), counsel refer to the contract here involved as being a contract which " . . . provides for negotiation and the adoption of modifications . . . "

The provisions of Article I of the contract did not provide for negotiation and adoption of modifications. It is true that it provided that, as the first step toward terminating the agreement, either party to the contract could submit to the other a proposed amendment to the contract. That, however, is far short of providing for negotiation and adoption of modifications. There is nothing in that provision which would imply that the party to whom such an amendment was submitted was obligated to agree to it in the form in which it was submitted or in altered form.

This contract did not contain a re-opening clause. It provided for no date on which modifications should be effected. Article I of the contract provided only the procedure by which either party might have canceled and termi-

noted the contract on the happening, in the order stated, of each of four conditions precedent: (1) written notice after August 23, 1951, by either party to the other of its desire to amend the agreement, (2) negotiations between the company and the union during the period of sixty days immediately following the receipt of such notice in an attempt to agree on the amendment proposed, (3) absence of agreement as to the proposed amendment during the period stated, and (4) a sixty day written notice of termination of the agreement.

Counsel for the petitioner, at page 48 of their brief, refer in passing to the fact that the contract here involved did not contain a no strike clause. On the authority of *Sands*, we assert with confidence that that fact is of no consequence here since in *Sands* the contract involved did not contain a no strike clause.

Counsel for petitioner further contend (50) that under the principle established by this Court in the *Sands Manufacturing Co.* case, Lion Oil Company had no right to suspend the employment of the employees involved as a penalty for their having participated in the strike in violation of contract, but was permitted only to discharge them as a penalty for their unprotected activity.

If that conclusion were sustained, it would be most disruptive of peaceful industrial relations. It is well known that when an employer discharges striking employees the bitterness between the contestants is prolonged by such action. Only a long continued dispute, most disruptive of peaceful industrial relations, can be expected as a result of such action.

When the employees here involved struck in violation of contract, Lion Oil Company did not elect to adopt the harsh action of discharging the 546 striking employees. To the contrary, between the date upon which the strike

began and June 21, 1952, on which date the union offered to return the men to work, the company attended bargaining sessions with representatives of the union in an effort to settle the strike.

On June 21 the union and the men were continuing the strike begun in violation of contract. Their concerted activities, therefore, continued to be unprotected by the Act. Under those circumstances, when the union offered to return the men to work on June 21, the course was still open to the company, as it should have been, to suspend each of the striking employees from employment rather than to discharge him.

Consequently, two days later, the company sent to each striking employee a copy of a letter which it had transmitted to the union, stating that the dispute between the company, the union and the employees involved could not be resolved until the strikers were "willing to agree to go to work and continue to work for a period of at least one year with no strike or other work stoppage during that period" (R. 100). That statement, we submit, was a suspension of each striker for cause.

The right of an employer to suspend an employee for cause is recognized by the Act. Section 10 (c) of the Act contains the following provision: "No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause." By that provision, the Board in this case was deprived of authority to enter that portion of its order which required Lion Oil Company to make whole each of the employees on strike with respect to loss of earnings during the period beginning June 21, 1952, and ending on August 3, 1952, the date upon which the dispute was settled.

It appears unnecessary for us to argue to sustain the merit of requiring a union and the men represented by it to perform faithfully the obligations which the union has assumed under a collective bargaining contract executed by it as representative of the employees so long as the employer, as in this case, complies with the agreement and does not commit an unfair labor practice. We would not presume to improve upon the statements made with respect thereto in the House conference report which we have shown in full in the Appendix at page 43.

The strike in this case being a strike in violation of contract, all activity of the union and of the strikers in connection with it was concerted activity unprotected by the Labor Management Relations Act. As held in *Sands*, Lion Oil Company was not, after the strike, obligated to bargain with the union and had the right to permit individual strikers to return to work. The Board, therefore, was without authority to enter the order entered by it in this case.

For these reasons the order of the Court of Appeals in this case setting aside the order of the Board was proper and should be affirmed regardless of whether that order may be sustained by the application of Section 8 (d) of the Act to the facts in this case. "In the review of judicial proceedings, the rule is settled that, if the decision below is correct, it must be affirmed although the lower court relied upon a wrong ground or gave a wrong reason." *Brown v. Allen*, 344 U. S. 443, 459, *Helvering v. Gowran*, 302 U. S. 238, 245.

Point II

THE UNION, IN CALLING THE STRIKE INVOLVED IN THIS CASE AND CAUSING THE EMPLOYEES REPRESENTED BY IT TO REFUSE TO WORK FOR THE COMPANY, TERMINATED THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE UNION AND LION OIL COMPANY WITHIN THE MEANING OF THE WORD "TERMINATE" AS USED IN SECTION 8 (d) OF THE ACT WITHOUT COMPLYING WITH THE REQUIREMENTS OF THAT SECTION WITH RESPECT TO SUCH TERMINATION, AS A CONSEQUENCE OF WHICH THE BOARD HAD NO AUTHORITY TO ISSUE THE ORDER WHICH IT ISSUED IN THIS CAUSE.

The Court of Appeals was correct in holding that the strike here involved was in violation of Section 8 (d) of the Act and in setting aside the order of the Board on that ground.

Section 8 (d) states specific requirements which must be met by a party to a collective bargaining agreement who, by unilateral action, terminates that agreement. A party to such an agreement who terminates it by unilateral action without complying with all those conditions is made guilty of the commission of an unfair labor practice.

At the time the strike here involved began, the contract between the union and Lion Oil Company, in accordance with the provisions of sub-paragraph (b) of Article I (R. 28) of the contract, could have been terminated by either party on sixty day notice given to the other. The union, however, did not elect to terminate the agreement, as, under the contract, it had a right to do, by notice to the company, but took the bit in its teeth and called the employees here involved out on strike, thereby breaching,

repudiating and terminating that contract, with total disregard of all of the requirements of Section 8 (d) of the Act.

We submit that the legislative history, with respect to the various provisions of the Act, to which we have referred in our discussion of the point that a strike in violation of contract is unprotected activity under Section 7, demonstrates that the total breach and repudiation of the contract here involved, by the union and the strikers, constituted a termination of that contract within the meaning of the word "terminate" in the introductory clauses of the proviso of Section 8 (d) of the Act.

By the refusal of the men to work under the contract, it became impossible for Lion Oil Company to perform its obligations under the contract. The strike of April 30, 1952, sapped the contract of all vitality, bringing its active existence to an end.

Viewing the use of the word "terminate" in the introductory clauses of the proviso of Section 8 (d) in the light of the intention expressed in the legislative history of the Act, that strikes in violation of contract should be unprotected activity; that collective bargaining contracts were, by the Act, made equally binding and enforceable on both parties; and the concurrence by the minority in the committee report on the bill in the Senate that collective bargaining agreements should be faithfully performed by the parties, the word "terminate" as used in the introductory clauses of the proviso of Section 8 (d) would be hollow indeed if its meaning, as there used, is not sufficiently broad to denote a total breach and repudiation of a collective bargaining agreement. The word "terminate" was there used in its factual sense.

If the union had, after October 23, 1951, adopted the course of terminating the contract as provided in the con-

tract before calling a strike, it could have done so by giving a sixty day written notice of its election to do so, which would have, in accordance with the provisions of the contract, ended the contract at the expiration of the sixty days. That notice also would have complied with the mandate of Section 8 (d) of the Act with respect to notice of termination. If such notice had been given and the union had thereafter called this strike prior to the expiration of the sixty days, it would have committed an unfair labor practice under the provisions of Section 8 (d) and the striking employees which it represented would have lost their status as employees under the loss of status provision of that Section.

The union and the employees participating in the strike in this case should not be placed in a more favorable position merely because of the fact that the union disregarded totally the requirements of Section 8 (d) and, by its unilateral act, brought to an end the life of the contract by total breach and repudiation of it. To hold that by such action the union did not terminate the contract without compliance with the provisions of Section 8 (d) would be contrary to the purpose and spirit of the Act as a whole. That anomalous situation can be avoided by interpreting the word "terminate" as used in the introductory clauses of the proviso to mean not only the bringing of a collective bargaining contract to an end by exercising a right to terminate given in the contract, but also bringing such a contract to an end by total breach and repudiation of it.

If it is not true that the calling of the strike in this case by the union and the participation in the strike by the employees terminated the existing contract between the union and Lion Oil Company, the proviso of Section 8 (d) has no application to the facts in this case. That conclusion must be reached from the meaning of the introductory clauses of the proviso of Section 8 (d). Unless a strike in

total breach and repudiation of a contract terminates it, those introductory clauses relate only to a situation in which one party to a collective bargaining agreement, who has a right under the agreement to terminate it, takes the required step to do so. That step toward terminating the contract in accordance with contract provisions must be taken before any of the provisions of the following subsections (1), (2), (3) or (4) come into play. No notice to effect termination, as permitted by the contract, was given in this case.

We feel that the Board, in reaching the conclusion which it did reach in this case, fell into error in two respects — First, they misinterpreted the meaning of the word “modify” in the introductory clauses of the proviso of Section 8 (d), and, second, they misinterpreted the meaning of Article I of the contract here involved.

The majority of the Board held that the union complied with Section 8 (d) of the Act by giving the company notice of its desire to amend the contract, informing Federal Mediation and Conciliation Service and the Commissioner of Labor of Arkansas of that fact, and waiting sixty days after that notice was given before it called the strike though the contract remained in full force and effect at the time the strike was called. The gravamen of the reasoning of the majority in reaching that conclusion is the following statement (R. 213): “It suffices for our decision here that the contract specifically provided for modification and that the earliest date on which modification could be made effective was October 23, 1951.”

If, by that statement, it was meant that October 23, 1951, was the first date upon which the contract could have been modified by mutual agreement, it is false. It is a most rudimentary principle of the law of contracts that a bilateral contract may be modified at any time by mutual consent of the parties, and nothing in the Act relates to

the parties so doing. If, by that statement, the majority of the Board meant that October 23, 1951, was the earliest date on which modification of the contract, by unilateral action of one of the parties, could be made, the statement is equally false. The contract here involved did not give either party the right to modify the contract by its unilateral act.

The language of Article I of the contract cannot be interpreted as giving to either party to the contract unilateral right to modify it, nor did it contain a re-opener clause, whatever that may mean. Article I of the contract provided only the procedure by which either party might have *canceled and terminated* the contract on the happening, in the order stated, of each of four conditions precedent: (1) written notice after August 23, 1951, by either party to the other of its desire to amend the agreement, (2) negotiations between the company and the union during the period of sixty days immediately following the receipt of such notice in an attempt to agree on the amendment proposed (3) absence of agreement as to the proposed amendment during the period stated, and (4) a sixty day written notice of termination of the agreement.

That provision was hand tailored to fit the requirement of Section 8 (d) of the Act with respect to the notice required to terminate a contract permitting unilateral termination by notice. It has nothing to do with modification of the contract by one of the parties to it.

The notice given by the union of its desire to modify the contract did not modify the contract. It was not so intended for the union had no right under the contract to modify it. The notice was given "in accordance with the provisions of the agreement" (R. 81) as the first step toward a possible termination of the agreement in the manner provided in Article I thereof.

The requirements of sub-sections (1), (2), (3) and (4) of the proviso of Section 8 (d), do not come into play with respect to modification of a contract in the absence of an act by one party to the agreement, who has a right under the contract to do so, to effect modification of it. The introductory sentence of the proviso so states. Therefore Section 8 (d) requirements, relative to modification of a contract, have no bearing in this case. The union, having no right under the contract here involved to modify it, could not take the first step toward modification of it which would call for compliance with sub-sections (1), (2), (3) and (4) of the proviso.

That conclusion is supported by the statement made by Senator Taft during the debate upon the bill in the Senate, explaining the functions of the Federal Mediation and Conciliation Service, as follows (Cong. Rec. April 23, 1947, p. 3955) :

"We have provided in the revision of the collective-bargaining procedure, in connection with the mediation process, that before the end of any contract, whether it contains such a provision or not, either party who wishes to open the contract may give 60 days' notice in order to afford time for free collective bargaining, and then for the intervention of the Mediation Service. If such notice is given, the bill provides for no waiting period except during the life of the contract itself. If, however, either party neglects to give such notice and waits, let us say, until 30 days before the end of the contract to give the notice, then there is a waiting period provided during which the strike is an unlawful labor practice for 60 days from that time, or to the end of the contract and 30 days beyond that time. In that case there is a so-called waiting period during which a strike is illegal, but it is only brought

about by the failure of the union itself to give the notice which the bill requires shall be given."

Those remarks of the Senator made in debate should be considered in the light of the statement made by him and other members of the committee in Senate Report 105 on S. 1126 (S. Rep. No. 105, 80th Cong., 1st Sess., p. 24) where it is stated with respect to Section 8 (d) of the Act:

"Another substantive feature of this subsection is a provision which relates to employers and labor organizations which are parties to collective agreements. Most agreements have an expiration date, with an automatic renewal clause in the absence of advance notice by either side of a desire to terminate or modify. Under this section, parties to collective agreements in the future would be required to give 60 days' notice in advance of the terminal date, if they desire to terminate or amend. Should the parties fail to agree on a new contract in the next 30 days, the party taking the lead in refusing the old contract has the duty to notify the new Federal Mediation Service of the impasse. Should the notice not be given on time, irrespective of the presence or absence of a 60-day clause in the collective agreement, it becomes an unfair labor practice for an employer to change any of the terms or conditions specified in the contract for 60 days or to lock out his employees. Similarly, it is an unfair labor practice by a union to strike before the expiration of the 60-day period. Any employee who engages in a strike during the 60-day period would lose any rights under sections 8, 9, and 10 of the Wagner Act, unless and until he is reemployed. It should be noted that this section does not render inoperative the obligation to conform to notice provisions for longer periods, if the collective agreement so provides. Failure to give

such notice, however, does not become an unfair labor practice if the 60-day provision is complied with."

The argument of counsel for petitioner with respect to application of Section 8 (d) to the facts in this case, is filled with statements misconstruing the meaning of Article I of this agreement. We have heretofore directed attention to a few of them. The Court will recognize many others.

The Board was also in error in relating this strike to the notice given by the union to Lion Oil Company on August 24, 1951. That notice stated the desire of the union to amend the existing contract in 43 particulars (R. 82-94). This strike was called by the union eight months later as a part of a nationwide strike in the oil industry called by the union, and other unions collaborating with it (R. 117) to support their nationwide demand for a specific wage increase of 22c an hour in each hourly wage rate then in effect, increased allowances for shift differentials and an additional holiday with pay.

Counsel for the petitioner attempt to differentiate the words "expiration date" in sub-section (1) of the proviso of Section 8 (d) and in sub-section (4) thereof. It is apparent to us that the two words mean exactly the same thing in both places, their meaning being the date upon which the existence of a bilateral collective bargaining contract comes to an end.

If we are correct in our contention that the word "terminate" should be construed as we have stated, the calling of the strike in this cause by the union was an unfair labor practice under the provisions of Section 8 (d) of the Act. Consequently, the Court of Appeals was correct in applying the provisions of that Section to the facts in this case and setting aside the order of the Board. An unfair labor practice having been committed by the union and

participated in by the strikers, the order of the Board did not effectuate the purposes of the Act.

If, however, this Court is of the opinion that the provisions of Section 8 (d) are not applicable to the facts in this case, nevertheless the order of the Court of Appeals should be affirmed on the ground that calling this strike, in violation of contract, and the participation of the strikers in it, was unprotected activity by the union and the strikers.

CONCLUSION

For the reasons which we have stated, it is respectfully submitted that the judgment of the court below should be affirmed.

Jeff Davis
B. L. Allen
Sam Pickard, Jr.

APPENDIX .

"RIGHTS OF EMPLOYEES

"SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3)."

“(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

“(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

“(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

“(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

“(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and condi-

tions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer."

“(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided*, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: *And provided further*, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof,

such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed."

"RIGHTS OF EMPLOYEES

"SEC. 7 (a) Employees shall have the right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities (not constituting unfair labor practices under section 8 (b), unlawful concerted activities under section 12, or violations of collective-bargaining agreements) for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities: Provided, That nothing herein shall preclude an employer from making and carrying out an agreement with a labor organization as authorized in section 8 (d) (4)."

"ENFORCEMENT OF CONTRACT RESPONSIBILITIES

The committee bill makes collective-bargaining contracts equally binding and enforceable on both parties. In the judgment of the committee, breaches of collective agreement have become so numerous that it is not sufficient to allow the parties to invoke the processes of the National Labor Relations Board when such breaches occur (as the bill proposes to do in title I). We feel that the aggrieved party should also have a right of action in the Federal courts. Such a policy is completely in accord with the purpose of the Wagner Act which the Supreme Court declared was 'to compel employers to bargain collectively with their employees to the end that an employment contract, binding on both parties, should be made' (*H. J. Heinz & Co.*, 311 U. S. 514).

The laws of many States make it difficult to sue effectively and to recover a judgment against an unincorporated labor union. It is difficult to reach the funds of a union to satisfy a judgment against it. In some States it is necessary to serve all the members before an action can be maintained against the union. This is an almost impossible process. Despite these practical difficulties in the collection of a judgment against a union, the National Labor Relations Board has held it an unfair labor practice for an employer to insist that a union incorporate or post a bond to establish some sort of legal responsibility under a collective agreement.

President Truman, in opening the management-labor conference in November 1945, took cognizance of this condition. He said very plainly that collective agreements should be mutually binding on both parties to the contract:

We shall have to find methods not only of peaceful negotiations of labor contracts, but also of insur-

ing industrial peace for the lifetime of such contracts. Contracts once made must be lived up to and should be changed only in the manner agreed upon by the parties. If we expect confidence in agreements made, there must be responsibility and integrity on both sides in carrying them out.

If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.

Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal courts. Our amendment would provide for suits by unions as legal entities and against unions as legal entities in the Federal courts in disputes affecting commerce."

"It should be noted that the Board has construed the present act as denying any remedy to employees striking for illegal objectives. (See *American News Co.*, 55 N. L. R. B. 1302, and *Thompson Products*, 72 N. L. R. B. 150). The Supreme Court has interpreted the statute as not conferring protection upon employees who strike in breach of contract (*N. L. R. B. v. Sands Manufacturing Company*, 306 U. S. 332); or in breach of some other Federal law (*Southern Steamship Company v. N. L. R. B.*, 316 U. S. 31); or who engage in illegal acts while on strike (*Fansteel Metallurgical Corp. v. N. L. R. B.*, 306 U. S. 240).

This bill is not intended to change in any respect existing law as construed in these administrative and judicial decisions."

“RIGHTS OF EMPLOYEES

Both the House bill and the Senate amendment in amending the National Labor Relations Act preserved the right under section 7 of that act of employees to self-organization, to form, join, or assist any labor organization, and to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The House bill, however, made two changes in that section of the act. *First*, it was stated specifically that the rights set forth were not to be considered as including the right to commit or participate in unfair labor practices, unlawful concerted activities, or violations of collective bargaining contracts. *Second*, it was specifically set forth that employees were also to have the right to refrain from self-organization, etc., if they chose to do so.

The first change in section 7 of the act made by the House bill was inserted by reason of early decisions of the Board to the effect that the language of section 7 protected concerted activities regardless of their nature or objectives. An outstanding decision of this sort was the one involving a 'sit down' strike wherein the Board ordered the reinstatement of employees who engaged in this unlawful activity. Later, the Board ordered the reinstatement of certain employees whose concerted activities constituted mutiny. In both of the above instances, however, the decision of the Board was reversed by the Supreme Court. More recently, a decision of the Board ordering the reinstatement of individuals who had engaged in mass picketing was reversed by the Circuit Court of Appeals (*Indiana Desk Co. v. N. L. R. B.*, 149 Fed. (2d) 987) (1944).

Thus the courts have firmly established the rule that under the existing provisions of section 7 of the National Labor Relations Act, employees are not given any right to engage in unlawful or other improper conduct. In its most recent decisions the Board has been consistently applying the principles established by the courts. For example, in the *American News Company case* (55 N. L. R. B. 1302) (1944) the Board held that employees had no right which was protected under the act to strike to compel an employer to violate the wage stabilization laws. Again, in the *Scullin Steel case* (65 N. L. R. B. 1294) and in the *Dyson case* (decided February 7, 1947), the Board held that strikes in violation of collective bargaining contracts were not concerted activities protected by the act, and refused to reinstate employees discharged for engaging in such activities. In the second *Thompson Products case* (decided February 21, 1947) the Board held that strikes to compel the employer to violate the act and rulings of the Board thereunder were not concerted activities protected by the provisions of section 7. The reasoning of these recent decisions appears to have had the effect of overruling such decisions of the Board as that in *Matter of Berkshire Knitting Mills* (46 N. L. R. B. 955 (1943)), wherein the Board attempted to distinguish between what it considered as major crimes and minor crimes for the purpose of determining what employees were entitled to reinstatement.

By reason of the foregoing, it was believed that the specific provisions in the House bill excepting unfair labor practices, unlawful concerted activities, and violation of collective bargaining agreements from the protection of section 7 were unnecessary. Moreover, there was real concern that the inclusion of such a provision might have a limiting effect and make improper conduct not specifically mentioned subject to the protection of the act."

"In section 7 of the conference bill there has been eliminated the first of the proposed changes contained in the House bill—that is, the language specifically excluding from the protection of section 7 unfair labor practices, unlawful concerted activities, and breaches of collective bargaining agreements. The rejection of this clause by the conferees does not mean that concerted activities which are made unfair labor practices are lawful by reason of breaches of law, breaches of contract, or that their objectives should be deemed 'protected activities' under the act. In the early period of the Board there had been decisions to the effect that the language of section 7 protected concerted activities, regardless of their nature or objectives. An outstanding decision of this sort was one involving a sit-down strike wherein the Board ordered the reinstatement of employees engaged in the unlawful activity. In another case the Board ordered certain seamen to be reinstated, although their concerted activities amounted to mutiny under another statute. In both of these instances, however, the decision of the Board was reversed by the Supreme Court (*Fansteel Metallurgical Corp. v. N. L. R. B.*, 306 U. S. 240; *Southern Steamship Co. v. N. L. R. B.*, 316 U. S. 31). The Supreme Court has also interpreted the statute as not conferring protection upon employees who strike in breach of contract (*N. L. R. B. v. Sands Manufacturing Co.*, 306 U. S. 332).

Both the House bill and the Senate amendment preserved the right under section 7 of employees to self-organization to form, join, or assist any labor organization, and to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The House bill specifically set forth that employees were also to have the right to refrain from self-organization, etc., if they chose to do so.

In its most recent decisions the Board has been consistently applying the principles established by the Supreme Court. For example, in the *American News Company case* (55 N. L. R. B. 1302 (1944)), the Board held that employees had no right protected under the act to strike to compel an employer to violate the wage-stabilization laws. Again, in the *Scrullin Steel case* and in the *Dyson case* (decided February 7, 1947), the Board held that strikes in violation of collective-bargaining contracts were not concerted activities protected by the act, and refused to reinstate employees discharged for engaging in such activities. In the second *Thompson Products case* (decided February 21, 1947), the Board held that strikes to compel the employer to violate the act and rulings of the Board thereunder were not concerted activities protected by the provisions of section 7. These recent decisions have had the effect of overruling the decision of the Board in *Matter of Berkshire Knitting Mills* (46 N. L. R. B. 955 (1943)), wherein the Board attempted to distinguish between what it considered as major crimes and minor crimes for the purpose of determining what employees were entitled to reinstatement.

By reason of the foregoing, it was believed that the specific provisions in the House bill excepting unfair labor practices, unlawful concerted activities, and violation of collective-bargaining agreements from the protection of section 7h were unnecessary. Moreover, there was a fear that the inclusion of such a provision might have a limited effect and make unlawful activities other than those specifically mentioned subject to the protection of the act. Other provisions of the conference agreement deal with this particular problem in general terms. For example, in the declaration of policy to the new National Labor Relations Act adopted by the conference committee, it is stated with reference to undesirable practices of labor organizations, their officers, and members that the 'elimination of such

practices is a necessary condition to the assurance of the rights herein guaranteed.' This demonstrates a clear intention that these undesirable, concerted activities are not to have any protection under the act, and to the extent that the Board in the past has accorded protection to such activities, the conference agreement makes such protection no longer possible. Furthermore, in section 10 (c), as proposed in the conference agreement; it is specifically provided that no order of the Board shall require the reinstatement of any individual or the payment to him of any back pay if such individual was suspended or discharged for cause."